Response to Comments on State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State

[Proposed for Inclusion in the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California]

STATE WATER RESOURCES CONTROL BOARD

March 2019

This document provides responses to comments submitted on the July 21, 2017 preliminary draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures) received during the July 21 – September 18, 2017 public comment period. To accommodate the breadth of comments received and limit redundancy in staff responses, staff prepared general responses to widely received comments, provided below in sections 1 - 12. Responses to individual comment letters can be found in the second portion of this document. Responses to individual comments may include references to general responses, a response addressing the individual comment, or a combination of both. Finally, this document also provides responses to comments received through letter campaigns, and those responses can be found at the end of this document.

General Responses

#1: Alternatives Analysis

The alternatives analysis serves two related purposes. The first purpose is to document that an appropriate sequence of actions has been taken first to avoid, and second to minimize, adverse impacts to waters of the state. The second purpose is to identify the least environmentally damaging practicable alternative (LEDPA). The analysis must establish that the proposed project alternative is the LEDPA in light of all potential direct, secondary (indirect), and cumulative impacts on the physical, chemical, and biological elements of the aquatic ecosystem. Currently, alternatives analyses at the State Water Resources Control Board and Regional Water Quality Control Boards (collectively, Water Boards) may be considered differently depending on the board. Some regional boards may require applicants to complete an alternatives analysis irrespective of whether the Corps requires one. Other regional boards may rely on Corps alternatives analyses, even where an analysis does not consider impacts to waters outside of the Corps jurisdiction. (For additional information on alternatives analyses, please see section 6.7 of the Staff Report.) To provide a consistent process and ensure that alternatives analyses address impacts to non-federal waters of the state, the Procedures outline alternatives analysis submittal, review, and approval requirements for individual Orders. The Water Boards will analyze information submitted with all applications to ensure that a proposed project complies with the Procedures and demonstrates that a sequence of actions have been taken to first avoid and then to minimize adverse impacts to waters of the state. For some applications, the applicant will be required to evaluate alternatives to ensure that the proposed project is the LEDPA.

When the Corps requires an Alternatives Analysis

Under the EPA's 404(b)(1) Guidelines, the Corps analyzes project alternatives and selects the LEDPA for the project. Under the Procedures, when the Corps requires an alternatives analysis, the applicant is required to submit the same information to the Water Boards.

Many commenters were concerned that the Procedures could result in conflicting LEDPA determinations in cases when the Water Boards and the Corps require that the proposed project alternative is the LEDPA.

The Water Boards will continue to review the same information that is submitted to the Corps to ensure that practicable alternatives have been considered and adverse impacts have been avoided and minimized to the extent practicable. The Water Boards will defer to the Corps as to the adequacy of the alternatives analysis for waters of the state that are also waters of the U.S. except under certain circumstances set forth in section IV.B.3, which are listed below. These circumstances are necessary to ensure that waters of the state, both federal and non-federal, are adequately protected.

- The Executive Officer or Executive Director determines:
  - The Corps did not provide the permitting authority with an adequate opportunity to collaborate in the development of the alternatives analysis;
  - The Corps' alternatives analysis does not adequately address issues identified in writing by the Executive Officer or Executive Director to the Corps during the development of the Corps' alternatives analysis; or
  - The project and all of the identified alternatives would not comply with water

quality standards.

If a project includes discharges to waters of the state that are outside of federal jurisdiction, the Water Boards will require that the applicant supplement the alternatives analysis to include non-federal waters of the state. Applicants are encouraged to engage the Water Boards early in the alternatives analysis process to increase the likelihood that the Water Boards have adequate opportunity to collaborate with the Corps on the development of alternatives. Giving the Water Boards an opportunity to collaborate in the development of an alternatives analysis will help ensure that the project is determined by both the Corps and the Water Boards to be the LEDPA and avoid application approval delays.

Water Board Only Alternatives Analysis

In cases when the Corps does not require an alternatives analysis, an applicant must prepare a project-specific alternatives analysis that the Water Boards will use to determine that the proposed project alternative is the LEDPA (section IV.A.1.h). This requirement is subject to a number exemptions that allow the Water Boards to better prioritize resources. Where an alternatives analysis is required, the Procedures use a tiered approach to provide applicants quantitative and qualitative guidance to determine the appropriate level of analysis.

Projects that fall within tier three require an analysis of off-site alternatives. Projects that fall within tier two are required to analyze on-site alternatives. Applicants for tier one projects are only required to provide a description of any steps that have been taken or will be taken to avoid and minimize loss of, or significant impacts to, beneficial uses of waters of the state.

Many commenters suggested that projects be exempt from the alternatives analysis requirement when the Corps does not require one, specifically for projects that enroll under a Corps' General Permit. Other commenters advocated that projects should always be required to conduct an alternatives analysis regardless of whether the Corps requires one. Some commenters requested the thresholds in the alternatives analysis tiers be revised to match impact thresholds that are commonly used in Corps general permits. Many commenters were also concerned about the level of discretion left to the Water Boards and recommended limiting when the Water Boards may allow for a lower level of analysis. Finally, some commenters were concerned that the alternatives analysis requirement would interfere with routine operation and maintenance activities.

The Corps generally do not require a project-level alternatives analysis where a project is permitted under a Corps general permit. Some Corps' general permits are certified by the State Water Resources Control Board (State Water Board) under a general Order, others are not certified. The 2017 version of the Procedures already exempted from the alternatives analysis requirement projects that use a Water Board's general Order, including the State Water Board's general certification of nationwide permits. In response to comments received on the alternatives analysis requirement, the Procedures were revised to include an additional exemption for projects that meet the terms and conditions for coverage under an uncertified Corps' general permit, including any Corps District's regional terms and conditions, unless that project meets specific criteria. As set forth in section IV.A.1.g.ii, the exemption would not apply, and an alternatives analysis would be required, if the discharge of dredge or fill material will directly impact one or more of the following:

a) More than two-tenths (0.2) of an acre or 300 linear feet of waters of the state;

b) Rare, threatened, or endangered species habitat in waters of the state;
c) Wetlands or eelgrass beds; or
d) Outstanding National Resource Waters or Areas of Special Biological Significance.

Additional discussion of how these criteria were chosen is provided in the Staff Report in section 6.7. These criteria allow the Water Boards to provide additional exemptions for small, minimally-impacting projects so that they can focus resources on large projects, or projects impacting difficult to replace resources. The tiered framework in section IV.A.1.h of the Procedures were retained to manage the level of analysis sufficient to determine that the proposed project alternative is the LEDPA. However, the criteria for Tier 3 has been modified to match the criteria for the new exemption. Alternatives analyses for projects that meet the criteria described above, but inherently cannot be located in an alternate location, need only consider on-site alternatives.

To develop the criteria listed above, State Water Board staff reviewed three years of available data for projects certified during fiscal years 2014 through 2017 to estimate how many projects would have been required to prepare an alternatives analysis if the Procedures had been effective during that time period. The available data included project impact data and available geospatial data sets.[1] The review estimated that about 50 percent of projects would have been exempt from the alternatives analysis requirement in the Procedures. This breaks down into 13 percent of projects that qualified for the uncertified general permit exemption, plus about 40[2] percent that would have qualified for other exemptions in the Procedures.

Between 10 to 25 percent of those projects that would not been exempted under the proposed Procedures would have been required to prepare some type of alternatives analysis under existing practices by the Water Boards. Accordingly, and if future projects are similar to the types of projects that were included in the data review, staff estimates that about 17 to 32 percent of incoming projects will require some type of alternatives analysis under the Procedures that may have not been required pre-Procedures. These projects represent those that have large impacts or impact difficult to replace resources and merit additional review.

The quantitative impact thresholds set forth in the tiered framework in section IV.A.1.h of the Procedures have not been revised in response to comments. Many commenters recommended a higher quantitative impact threshold (0.5 acres), asserting that this was consistent with Corps practice. While this is true for some Corps' Nationwide Permits, there is not, as asserted by commenters, a standard threshold applied to all Nationwide Permits. In addition, staff analyzed the number projects that would be subject to the alternatives analysis requirement based on impact size. Based on an analysis of available data from the last three years of permitting, most applications are significantly smaller than 0.5 acres. Table 1 provides the relative number of permits that would be affected at various impact thresholds

[1] Data used in this analysis included data from the California Integrated Water Quality System (CIWQS) to assess project impact size, aquatic resources type, and location. Geospatial data used in this analysis was collected from the California Department of Fish and Wildlife (eelgrass beds),
U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration (federally designated critical habitat for threatened or endangered species), California Natural Diversity Database, and the State Water Board (beneficial uses).
[2] There was not sufficient data to analyze six percent of projects.

Table 1 – Cumulative number of projects at various impact thresholds

Impact Size (Acres)	Percentage of Projects at or Below Impact Size
0.1	55%
0.2	65%
0.3	72%
0.4	75%
0.5	78%
0.6	80%
0.7	82%
0.8	83%
0.9	84%
1.0	86%

Approximately 65 percent of projects permitted by the Water Boards in the past three years had impact sizes less than or equal to 0.2 acres. Increasing the threshold to 0.5 acres would decrease the number of projects required to prepare an alternatives analysis by 13 percent; however, it would nearly double the number of acres of project impacts that could be permitted without the benefit of an alternatives analysis.

The 2017 draft Procedures included a provision which allowed for the Water Boards to use discretion to determine that a lesser level of analysis is required than specified by the tiers. As the Procedures provide a broader exemption for projects permitted under a Corps' general permit, the provision providing for Executive Officer/Executive Director allowance for a lesser level of analysis has been removed. However, the Procedures continue to state that the level of effort for the alternatives analysis should be commensurate with the significance of the impacts resulting from the discharge.

Some commenters expressed concerns about conducting an alternatives analysis for routine operation and maintenance activities for existing facilities. Routine operation and maintenance activities will likely qualify as projects that inherently cannot be located in an alternate location and therefore only an on-site analysis will be required. The maintenance or replacement of facilities or structures that are associated with an aquatic resource are examples of projects that inherently cannot be located in an alternate location. These projects may include water conveyance or flood control facilities, water crossings for existing transportation corridors, or existing structures that are in or near an aquatic resource, such as power transmission structures. Although these projects cannot be located in an alternate location, impacts to waters can be minimized through the consideration of project design and use of best available technologies. In order to provide clarification, Tier 2 was revised to explicitly state that "[f]or routine operation and maintenance of existing facilities, analysis of on-site alternatives is limited to operation and maintenance alternatives for the facility." Furthermore, additional procedural changes were made to address routine operation and maintenance activities (see general response #12). Additional guidance on the appropriate level of effort required to comply

with the alternatives analysis is provided in section 6.7 of the Staff Report. Note that all applicants, even when an alternatives analysis is not required, must comply with the requirements set forth in section IV.B.1, which includes the requirement that applicants demonstrate that a sequence of actions has been taken to first avoid and then to minimize, and lastly compensate for adverse impacts to waters of the state.

#2: Wetland Jurisdictional Framework

Current or historic definitions of waters of the U.S.

Some commenters recommended the jurisdictional framework in section II.3 of the 2017 draft Procedures be revised to not include features as a water of the state based on a historic definition of waters of the U.S. These comments stated that including historic definitions of waters of the U.S. would inappropriately include all wetlands that were waters of the U.S. at any point in time, even though the analysis of which wetlands are waters of the U.S. has varied. Of particular concern was the inclusion of the 2015 Clean Water Rule, which has been in effect for a relatively short period of time.

The Procedures' jurisdictional framework language was clarified and retains the reference to current and historic waters of the U.S. in footnote 2 in section II. The reorganization is not a substantive change. All waters of the U.S. are also waters of the state. The Porter-Cologne Water Quality Control Act defines waters of the state broadly. "'Waters of the state' means any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code, § 13050(e).) Waters of the state is a more inclusive term than waters of the United States because waters of the state are not subject to the jurisdictional limitations of the Clean Water Act (CWA). Interpretations of the term "waters of the United States" have evolved over the years, including expansions and contractions, but the term "waters of the United States" has always been a subset of waters of the state. California Code of Regulations, title 23, section 3831(w) states that "[a]ll waters of the United States are also 'waters of the state.'" This regulation was adopted before Supreme Court decisions such as *Rapanos* and *SWANCC* added limitations to what could be considered a water of the U.S. Therefore, the regulation reflects an intention by the Water Boards to include a broad interpretation of waters of the U.S. into the definition of waters of the state.

Because the interpretation of waters of the U.S. in place at the time section 3831(w) was adopted was broader than any post-*Rapanos* or post-*SWANCC* regulatory definitions that incorporated more limitations into the scope of federal jurisdiction, it is consistent with the Water Boards' intent to include both historic and current definitions of waters of the U.S. as waters of the state. Further, the people of California have a reasonable expectation that a wetland will continue to be protected when it has been regulated in the past as a water of the U.S. regardless of any subsequent changes in federal regulations. The inclusion of both current and historic definitions of "waters of the United States" will help ensure some regulatory stability to an area that has otherwise been in flux.

Like the categories of the Water Boards' wetland jurisdictional framework, the definition of waters of the U.S. may be used to establish that a wetland qualifies as a water of the state; it cannot be used to exclude a wetland from qualifying as a water of the state. In other words, wetlands that are categorically excluded from a waters of the U.S. definition may nevertheless qualify as waters of the

state under one of the jurisdictional categories. In cases of uncertainty regarding the interpretation of a current or historic waters of the U.S. definition, such as when there is no applicable jurisdictional determination for that wetland, it is advisable to first analyze whether the wetland would fit within another jurisdictional category.

Relatively permanent part of the natural landscape

Many commenters were concerned that the language in the jurisdictional framework (now section II.3.c) regarding features that "resulted from historic human activity and are a relatively permanent part of the natural landscape" would invalidate the exclusions for artificial wetlands created for specific purposes (e.g., wastewater treatment, storm water treatment wetlands). Commenters further asserted that considering these wetlands as waters of the state would require unnecessary permitting activity, and would cause project delays and increase costs and create disincentives for creating these types of features.

The wetland jurisdictional framework (formerly section II.4.d in the 2017 draft; in the March 2019 version, it is section II.3.d) in the 2017 draft of the Procedures excluded artificial wetlands from jurisdiction if they are constructed for certain purposes (e.g., fire suppression, cooling water, active surface mining, log storage), as long as they are not: (II.3.a) approved as mitigation for impacts to other waters of the state, (II.3.b) identified in a water quality control plan, or (II.3.c) resulted from historic human activity and a relatively permanent part of the natural landscape.

As a result of the comments received, section II.3.c of the Procedures has been revised to clarify that “resulted from historic human activity and a relatively permanent part of the natural landscape” does not include features that are subject to ongoing operation and maintenance and to clarify that this category does not apply to the specifically enumerated artificial wetland features excluded from jurisdiction. The State Water Board’s intent was that wetlands that resulted from historic human activity and a relatively permanent part of the natural landscape would not include artificial wetlands constructed for specific purposes because the construction of the artificial wetlands would be too recent to be deemed “historic,” the artificial wetlands likely require ongoing maintenance such that they would not be deemed “relatively permanent,” and/or the artificial wetland was not part of the “natural landscape.” However, because there may be some ambiguity especially with respect to features that have in place for a number of years, are not temporary, and are designed to mimic natural features, the Procedures have been revised to clarify the intent of original language.

Specific types of jurisdictionally exempt facilities

Some commenters asserted that certain types of facilities should not be regulated by the Procedures and should therefore be added to the list of jurisdictional exemptions or added to the list of activities and areas excluded from the Procedures. Some commenters stated that water supply facilities, including groundwater recharge activities, should be excluded from the Procedures to avoid potential conflicts with the Sustainable Groundwater Management Act’s groundwater sub-basin objectives. Other commenters asserted that the Procedures should exempt multi-benefit constructed facilities, including storm water capture and use projects, and groundwater recharge activities because the Water Boards are actively promoting these types of projects for water conservation and supply. Some commenters also requested flood control facilities be exempt from jurisdiction.

Based on these comments, section II.3.d has been revised to add “recycled water treatment, storage,

or distribution," "maximizing groundwater recharge," "detention, retention, infiltration, or treatment of stormwater runoff and other pollutants or runoff subject to regulation under a municipal, construction, or industrial stormwater permitting program," and "treatment of surface waters." These types of wetlands serve a similar function and purpose compared to the other types of artificial treatment wetlands listed in the Procedures that are not considered waters of the state (section II.3.d). The Procedures were not revised to exempt flood control facilities from jurisdiction. While many waterways in California have been hydraulically altered to serve flood control purposes (e.g. Yolo bypass), such facilities may also support beneficial uses such as wildlife habitat or recreation. In addition, many facilities are considered jurisdictional waters under the CWA or were created by modification of an existing water, and accordingly it is consistent with the jurisdictional framework to continue to protect these waters as waters of the state. However, some activities may qualify for a procedural exclusion. Section IV.D was revised to exclude from the Procedures the routine and emergency operation and maintenance activities conducted by public agencies, water utilities, or special districts that result in the discharge of dredge or fill material to artificial existing waters of the state currently used and maintained primarily for one or more of the purposes listed in section II.3.d (ii), (iii), (iv), (x) or (xi); or for the purpose of preserving the line, grade, volumetric or flow capacity within the existing footprint of a flood control or stormwater conveyance facility.

The Procedures were not revised to exempt multi-benefit constructed facilities from jurisdiction. Within the context of the jurisdictional framework, "multi-benefit constructed facilities" would be an overly broad category that includes a wide range of facility types and purposes that is not well defined. Moreover, the jurisdictional framework pertains to only wetlands, and multi-benefit constructed facilities could potentially broaden the applicability of the jurisdictional framework, which would be confusing. Certain "multi-benefit constructed facilities" may already be excluded from jurisdiction if they met certain criteria set forth in the wetland jurisdictional framework in section II.3.d.

Note that even if a wetland is not a water of the state as per the framework outlined above, the Water Boards may still regulate discharges from the wetland where those discharges may impact water quality. For example, discharges from a treatment wetland to a water of the state typically require a National Pollutant Discharge Elimination System permit from the Water Boards. Moreover, discharges from a treatment wetland to upland areas that would affect groundwater may require WDRs.

Many commenters stated that wetland jurisdictional framework exemptions should be expanded to include artificial facilities that also contain non-wetland "other" waters of the state.

The Procedures include a definition, delineation procedures, and a jurisdictional framework, all of which apply only to wetlands; no other water body types are addressed by these three components of the Procedures. In the future, the State Water Board may consider addressing other water body types (e.g., lakes, rivers, creeks) similarly, but this is beyond the scope of this project. For now applicants are encouraged to consult with the Water Boards about whether a non-wetland aquatic feature is a water of the state.

Finally, some commenters requested that the Procedures exclude features that are excluded as waters of the U.S. as identified in the preamble language of the 1986 waters of the U.S. rulemaking. As background, the preamble language in the *Federal Register* notices by the Corps on November 13, 1986, and by EPA on June 6, 1988, identified certain waters and features, including some listed in the

comments received, as generally exempt. The preamble language also states that “EPA reserves the right on a case-by-case basis to determine that a particular waterbody within these categories of waters is a water of the United States.” The Clean Water Rule establishes some of these exclusions by rule, but the Clean Water Rule is only in effect in some parts of the U.S., and EPA has indicated an intention to repeal the rule.

There are several reasons why the state wetland jurisdictional framework does not adopt the verbatim language from the preamble language or the Clean Water Rule. First, the preamble language is subject to a case-by-case analysis, so adopting the preamble language as a rule would already put state practices out of line with federal practices. Second, the scope of waters of the U.S. is subject to significant uncertainty because EPA has indicated an intention to redefine waters of the U.S. and the Clean Water Rule is subject to ongoing litigation. It would cause confusion and would likely be a source of conflict if the state wetland jurisdictional framework adopted language from the federal level that is likely to change. Notably, the exact language in the preamble and the Clean Water Rule (and the comment letters received) are all slightly different. Third, the Clean Water Act has a different jurisdictional scope than the Porter-Cologne Water Quality Act. Accordingly, sometimes the basis for exclusion from the Clean Water Act is based on lack of connectivity to other jurisdictional waters, which is not a required consideration under Porter-Cologne. Fourth, the state jurisdictional framework applies to only wetlands. The federal exclusions can apply to non- wetland waters. For example, an artificial lake is outside the scope of the state jurisdictional framework except to the extent that wetlands have formed on the perimeter or in shallow portions of the lake.

In developing the jurisdictional framework, the categories set forth in the preamble language and the Clean Water Rule were carefully considered. Ultimately, in light of the uncertainty surrounding federal regulations and the difficulty defining some of the terms used, the framework utilized a different structure and terminology.

#3: Prior Converted Croplands

A number of comments requested revisions to the Procedures with respect to prior converted croplands (PCC), which is farmland that was cleared, drained, or otherwise manipulated to be cropped prior to December 23, 1985. The 2017 draft of the Procedures stated that PCC is excluded from application procedures in sections IV.A and IV.B, unless the PCC was abandoned or converted to non-agricultural use. Comments regarding PCC ranged from recommending that the exclusion be narrowed, to removing the restrictions on the exclusion. Some stakeholders recommended that PCC be treated like all other agricultural land, such that only activities described in CWA section 404(f) (e.g., normal farming, maintenance activities, construction and maintenance of irrigation and drainage ditches) on PCC are excluded from the Procedures. Specifically, some of these commenters raised the concern that PCC could be converted from wetland- compatible agricultural practices to non-wetland-compatible agricultural practices, and then subsequently converted to non-agricultural use without triggering Water Board review because the wetlands have been lost. Other stakeholders recommended (1) revising the definition of abandonment, (2) deleting the statement that the PCC exclusion will no longer apply if the land is converted to "non-agricultural use," and (3) incorporating PCC as a jurisdictional, rather than a procedural, exclusion. These comments asserted that these revisions more accurately mirrored the Corps’ practices regarding PCC. Section IV.D.2 of the

Procedures has been revised in response to comments. First, the revised language states that the exclusion applies to wetland areas that qualify as PCC within the meaning of 33 CFR section 328.3(b)(2). Second, the exclusion sets forth how the applicant may establish that the area qualifies as PCC. Third, the language has been revised to reflect all three agencies that may make PCC determinations. Finally, the language stating that the exclusion no longer applies if the wetland areas is converted to non-agricultural use has been revised to clarify that the exclusion is lost before the conversion.

The Procedures were revised to state that the exclusion applies to wetland areas that qualify as PCC within the meaning of federal regulations because not all areas that qualify as PCC will have a PCC certification. There was a concern that applicants without a PCC certification would be unable to avail themselves of this exclusion. Under the revised language, an applicant may present a PCC certification as evidence that the area qualifies as PCC. The applicant may also present other documentary evidence that the area qualifies as PCC where a certification has not been obtained. The revised language also specifies that qualifying as PCC means that the area has not been abandoned through five consecutive years of non-use for agricultural purposes.
Federal regulations have been interpreted as requiring that PCC is not abandoned. Although there are a number of different formulations of the abandonment principle, the preamble language to the 1993 regulations states that PCC that now meets the wetland criteria is considered abandoned unless “[f]or once in every five years, the area has been used for the production of an agricultural commodity, or the area has been used or will continue to be used for the production of an agricultural commodity in a commonly used rotation with aquaculture, grasses, legumes or pasture production.” (58 Fed. Reg. 45034.) It is expected that the scope of PCC, including interpretations of abandonment, would be interpreted consistently with how the Corps and EPA are defining PCC.

The 2017 draft of the Procedures referred only to PCC certifications completed by NRCS. Although in practice NRCS and the Corps strive to make consistent PCC determinations, the agencies are not bound by each other’s determinations. (See Joint Guidance from the Natural Resources Conservation Service and the Army Corps of Engineers Concerning Wetland Determinations for the CWA and the Food Security Act of 1985, February 25, 2005.) The revised language reflects that the Corps may determine whether an area is PCC for the purpose of the CWA. EPA was also added because EPA has final decision-making authority for determinations defining the jurisdictional scope of the CWA. (40 CFR § 230.3.)

The Procedures retains the clause referring to the conversion to “non-agricultural use” as a basis for the PCC exclusion. Some comments requested that this clause be removed. Specifically, some comments stated that the language regarding non-agricultural use did not accurately reflect the state of the law in light of *New Hope Power Co. v. U.S. Army Corps of Engineers* (2010) 746 F.Supp.2d 1272. The Procedures retained the language providing that the PCC exclusion will not apply if the wetland PCC is converted to non-agricultural use. *New Hope Power* held that the “Stockton Rules,” which interpreted “normal circumstances” in the context of PCC, failed to comply with the Administrative Procedures Act. But the language in the Procedures regarding conversion to non-agricultural use was not derived from the Stockton Rules, rather it was based on other indications of the Corps’ practices with respect to conversion of PCC to non-agricultural use, including the joint guidance with NRCS. In the proposed revised definition of the waters of the U.S., the Corps acknowledged that in instances when land has been proposed to change from agricultural to non-

agricultural use, the Corps' current practice is to make new jurisdictional determinations, regardless of any previous designation of prior converted cropland or if an actual change in use has occurred. (84 Fed. Reg. 4154, 4193.) In addition, the language has been retained because the PCC exclusion was meant to give regulatory relief regarding the discharge of dredge or fill material when the area was dedicated to agricultural use. Such an exclusion is consistent with the broader agricultural exclusions granted under CWA section 404(f) for certain agricultural activities. Moreover, retaining the non-agricultural use language is consistent with the Corps' practice of not applying the PCC exclusion to abandonment because conversion to non-agricultural is a clear indication that the land will not be used for agricultural production for at least five years. In addition, per the Joint Guidance, a certified wetland determination made by NRCS remains valid so long as the land is devoted to agricultural use or until the landowner requests review of the certification.

The Procedures were not revised to change the procedural exclusion to a jurisdictional exclusion. There may be waters that have beneficial uses unrelated to agricultural use notwithstanding their status as PCC. Moreover, a jurisdictional exclusion that relies in part on certification from NRCS, the Corps, or EPA would lead to unpredictable jurisdictional determinations and regulatory uncertainty as the standards by which PCC is determined may be modified in the future.

#4: Wetland Definition

Many comments were received regarding the Procedures' wetland definition; the main concerns included, but were not limited to: the definition was too inclusive, the definition was not inclusive enough, and the definition could result in different regulatory outcomes from the Corps.

Many commenters requested that the Water Boards adopt the Corps' wetland definition citing concerns that the difference in definitions could result in different regulatory outcomes, causing application delays and higher costs to applicants. Specifically, commenters were concerned that different wetland definitions would result in separate delineations for state and federal wetland areas and different compensatory mitigation requirements. In addition, a few commenters noted that the alternatives analysis requirement could potentially result in conflicting LEDPA determinations (see general response #1 (above)) if impacts to features identified as wetlands by the Water Boards are not identified as wetlands by the Corps due to the application of the rebuttable presumption for special aquatic sites. (Appendix A. Subpart B. Section 230.10 (a)(3).) In contrast, other commenters requested the Water Boards adopt a more inclusive one or two parameter definition that better aligns with other state agencies, such as the California Coastal Commission and the California Department of Fish and Wildlife.

Technical Wetland Definition and Delineation Procedures

The Procedures have not been revised in response to comments received on the wetland definition or delineation procedures. The proposed wetland definition has been peer reviewed and is based on the recommendation from the Technical Advisory Team (TAT), which was comprised of distinguished wetland scientists and practitioners. The TAT, in consultation with Water Board staff, developed the proposed Water Board wetland definition and provided the scientific rationale. Upon comparison of existing wetland definitions, the TAT found that "a new wetland definition is needed because none of the existing, candidate definitions fully represents all the various forms or kinds of landscape areas in California that are very likely to provide wetland functions, beneficial uses, or ecological services."

The proposed wetland definition, by including substrates that may not be addressed by NRCS Hydric Soil standards and by allowing for naturally unvegetated wetlands, succeeds in fully addressing California wetlands.

The wetland definition, and adoption of the Corps' wetland delineation procedures, will not present a significant departure from the practice of wetland identification or delineation in California. The Corps delineation manual addresses how to address wetlands that are unvegetated due to normal seasonal or annual variations. The arid west supplement provides further guidance on how to deal with "difficult wetland situations," which includes, among other things, guidance regarding when vegetation is lacking. The federal definition, when applied in conjunction with the delineation manual and supplements, generally defines wetlands the same. There are a few unvegetated wetlands that would, despite the application of the delineation manuals, not be classified as wetlands under the federal definition, such as unvegetated coastal mud flats, playas, and some seasonal wetlands, but cases of conflict between the definitions are expected to be rare. For this reason the Procedures adopt the Corps' delineation procedures, and, as noted by the TAT, there are no significant effects on methodology when applying the Corps delineation procedures to the proposed Water Board wetland definition. Please see TAT Memo No. 2: Wetland Definition 25 June 2009 (revised September 1, 2012) & TAT Memo No. 4: Wetland Identification and Delineation Version 14, March 1, 2011. Finally, the definition has been found to be scientifically sound by external peer reviewers selected independently through an established process by CalEPA.

Water Board staff, in consultation with the TAT, considered alternatives to the definition. The staff report broadly analyzes competing wetland definitions in section 10.2 of the staff report. The objective of analyzing alternative definitions is to identify the most appropriate definition for California wetlands that also meets the Water Board's regulatory mandates under the Porter-Cologne Act. The staff report concludes that neither a one nor a two parameter option are viable alternatives. First, there is the potential for declaring non-wetland upland features as wetlands due to relic hydric soil indicators and/or false-positive indicators of hydrophytic vegetation. Second, delineation procedures have not been developed for one or two parameter definitions.

As such, there is a lack of field identification criteria, indicators and guidance on regional variation. This is significant for an agency with regulatory responsibility for wetland protection. Finally, adopting a one or two parameter definition would create major regulatory inconsistencies with the USEPA and Corps' wetland definition. In addition, the staff report also concludes that a three parameter definition, such as the Corps' definition, is not a viable option. This approach leads to the exclusion of some important wetland types in California, such as un-vegetated coastal mudflats, playas and some seasonal wetlands.

It is important to note that some commenters incorrectly asserted that the technical wetland definition would qualify all areas that are void of vegetation as wetlands. Use of the proposed definition for wetland identification and delineation requires careful consideration of hydrology, substrate and vegetation in every case. The lack of vegetation does not, by itself, establish an area as a wetland. In cases where the hydrology and substrate criteria are present, but vegetation is absent, an analysis must be conducted to determine if that absence is a natural consequence of the hydrologic and substrate conditions and, if it is not, if the expected vegetation would be predominantly hydrophytic or not.

Technical Wetland Definition and Regulatory Outcomes

Some commenters asserted that the differences between Water Boards wetland definition and the federal wetland definition could result in differing regulatory outcomes. Specifically, some commenters focused on how the differences in definition could result in differences in the application of special protections afforded to wetlands and other "special aquatic sites" by the federal 404(b)(1) guidelines and the state supplemental guidelines section 230.10(a). Section 2301.10(a) of the federal 404(b)(1) guidelines and the state supplemental guidelines provides that where a proposed discharge affects a "special aquatic site," practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise (rebuttable presumption). Special aquatic sites are a discrete list of specially enumerated resources set forth in subpart E of both the federal and state guidelines. Special aquatic sites include wetlands as well as unvegetated mudflats (which do not meet the federal wetland definition, but do meet the Water Boards wetland definition). Some commenters argued that there would be different applications of the rebuttable presumption, which could ultimately lead to differences in the LEDPA determination.

The potential for different applications of the rebuttable presumption set forth in section 230.10(a) would exist only when a water of the U.S. does not meet the definition of a special aquatic site under the federal Guidelines, but meets the Water Boards' definition of a special aquatic site. It is expected that it would be rare that a water would be able to meet the Water Boards' wetland definition, but not the Corps' definition of wetland or unvegetated mudflat, and still be deemed a water of the U.S. To reduce the potential for conflict in these rare instances, section IV.B.3 of the Procedures have been revised to state that "[t]he permitting authority shall not apply the presumption set forth in the State Supplemental Dredge or Fill Guidelines, section 348 230.10(a)(3) to any non-vegetated waters of the U.S. that the Corps does not classify as a special aquatic site (as defined in subpart E of U.S. EPA's section 404(b)(1) Guidelines)." This revision should ensure that the Water Boards and the Corps will not identify conflicting LEDPA determinations based on differences in their definitions.

Also, some commenters argued that the difference between the Water Boards' and the Corps' wetland definition could result in conflicting compensatory mitigation requirements. The Water Boards will continue to retain discretion over the type, amount, and location of compensatory mitigation. As explained below, it is unlikely that the mere difference in the label applied to an aquatic feature would necessarily result in different compensatory mitigation or be the sole reason for disagreement regarding compensatory mitigation requirements. While retaining an independent review of compensatory mitigation requirements, the Water Boards will continue to "consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits within a single mitigation project, thereby reducing the cost of compliance to the applicant." (Section IV.B.5(b).) Differences in the wetland definitions between the Water Boards and the Corps should not cause significant difference in compensatory mitigation requirements because the Procedures require reliance on the Corps' verified delineations in most cases, and where they do not, require the same delineation methods as the Corps.

Compensatory mitigation requirements depend on a number of different considerations, including (1) the type of mitigation (i.e., kind of aquatic resource), (2) amount of mitigation, and (3) location of the mitigation. The appropriate type of compensatory mitigation is determined by analyzing how to replace the function and services of the impacted water (with a preference for in-kind when possible). Even if the Corps has labeled a feature a non-wetland water of the U.S. and the Water Boards have labeled a feature a wetland water of the state, the analysis of the function and services of the impacted water should be similar. For example, if the impacted water at issue is an unvegetated clay pan, both the Corps and the Water Boards would look first for in-kind replacement, i.e., an unvegetated clay plan (regardless of what it is called), and if that is not possible, out-of-kind mitigation, i.e., mitigation that replicates the function and services of the unvegetated clay plan as much as possible (regardless of what it is called). Note that even if the Water Boards and the Corps used the same wetland definition, the agencies could disagree as to what is the best out-of-kind mitigation.

With respect to mitigation amount, the Water Boards consider a number of factors, including but not limited to, the condition of the impacted water and the feasibility of replacing the lost functions. A higher mitigation ratio may be appropriate for aquatic features that are difficult to replace, such as wetlands. In such cases, the driving factors of the analysis is not just the application of a particular label, i.e., wetland, but consideration of the functions that will be lost, the importance of those functions to the watershed, and the likelihood that similar functionality will be provided by compensatory mitigation. Location of the proposed mitigation may also affect the mitigation ratio, regardless of the label applied to the impacted aquatic resource. Generally, a lower ratio is prescribed when mitigation is located within the same watershed as the impacted aquatic resource and a higher ratio is prescribed when the mitigation is located in a different watershed as the impacted aquatic resource.

#5: Ecological Restoration and Enhancement Projects

Projects that qualify as an Ecological Restoration and Enhancement Project (EREPs) are exempt from alternatives analysis and compensatory mitigation requirements. This regulatory relief aims to help incentivize the creation of projects that qualify as an EREP. Instead of an alternatives analysis and a compensatory mitigation plan, EREP applicants are required to provide a draft assessment plan, which includes information used to assess the long-term viability of the project and performance standards and condition assessment requirements that will be used to evaluate attainment of project objectives.

Commenters have asserted that assessment plan requirements are duplicative with provisions set forth in a binding restoration and enhancement agreements.

The Procedures were revised in response to these comments. To qualify for state and federal restoration programs, well-designed projects supported by planning and assessment documents will largely meet the project assessment requirements for EREPs in the Procedures. Accordingly, section IV.A.2.e of the Procedures was revised to include the following: “[a]n assessment plan approved by a federal or state resource agency, or a local agency with the primary function of managing land or water for wetland habitat purposes in accordance with a binding stream or wetland enhancement agreement, restoration agreement, or establishment agreement, will

satisfy these requirements. An assessment plan approved by a non-governmental conservation organization or a state or federal agency that is statutorily tasked with natural resource management may satisfy some or all of these requirements."

#6: Processing Timelines, Water Board Staff Workload, and Compliance Costs

Processing Timelines and Water Board Staff Workload

The Procedures supplement existing regulatory language found in the California Code of Regulations, title 23, sections 3855 through 3861, which describes how the Water Boards administer the 401 certification process for discharges of dredge or fill material to waters of the U.S. In addition to expanding the applicability of California Code of Regulations, title 23, section 3855 to individual waste discharge requirements for discharges of dredged or fill material to waters of the state, the Procedures establish application submittal and review requirements for waste discharge requirements for all discharges of dredged or fill material to waters of the state that are not also waters of the U.S. (Waste discharge requirements, waivers of waste discharge requirements, or 401 certifications are collectively referred to in this document as Orders.)

Commenters expressed general concerns that the application submittal, review, and approval process in the Procedures will increase staff workload and extend Water Board application processing timelines. Three specific concerns were conveyed by commenters: 1) the Procedures will require an increase in the number of alternatives analyses that staff will have to review and approve, leading to an increase in workload; 2) the overall process in the Procedures will add to staff review time (i.e., reviewing compensatory mitigation plans) and lead to delays in obtaining other agency approvals; and 3) the Procedures leave too much to staff discretion to require additional analysis or mitigation. Responses to these three concerns are detailed below.

Increase in Workload

In response to the comments concerning increased workload due to staff review and approval of alternatives analyses, the Procedures were developed to provide a consistent process for alternatives analysis submittal, review, and approval for individual Orders. As is current practice for many Regional Boards, the Procedures specify that if the Corps requires an alternatives analysis, Water Board staff will generally defer to the Corps' analysis. The Procedures specify deference to the Corps unless the Water Boards were not provided an opportunity to collaborate during the development of an alternatives analysis, the alternatives analysis does not adequately address issues raised during consultation, or the proposed alternatives do not comply with water quality standards.

In cases when the Corps does not require an alternatives analysis, the Procedures require applicants to submit a project-specific alternatives analysis to the Water Boards; however, this requirement is subject to a number of exemptions that allow the Water Boards to better prioritize resources. In response to comments received regarding requirements for alternatives analyses for smaller projects (such as those that qualify under an uncertified Corps' general permit), the Procedures were revised to include an additional exemption. Where an alternatives analysis is required by the Water Boards, the Procedures provide for three tiers of project analysis, reflecting an intent to require only that level of effort that is commensurate with the significance of the impacts resulting from the discharge. See general response #1 for more discussion regarding alternatives analysis requirements.

State Water Board staff assessed anticipated workload changes upon implementation of the Procedures regarding the alternatives analysis requirement. The level of complexity for alternatives analysis varied widely depending on the complexity of the project's impacts to waters, which is consistent with the approach set forth in the Procedures. For example, two regional boards require alternative analysis in all cases, regardless of whether the Corps also requires an alternatives analysis. Two regional boards typically do not require any level of alternatives analysis beyond reviewing alternative analysis prepared by the Corps. The Procedures are intended to improve statewide consistency in the review and processing of applications. The exemptions and tiering described above will provide a consistent approach that will focus Water Board resources on projects with very large impacts and/or impacts to sensitive resources. This may result in additional workload for some Regional Boards, and less for other Regional Boards. On balance, the workload is not expected to significantly increase on a statewide basis.

Delayed processing time

Commenters similarly stated that the Procedures' compensatory mitigation requirements would result in a significant increase in workload for Water Board staff, which could also lead to delays in application processing times. The Water Boards require compensatory mitigation to offset any impact to waters that cannot be fully avoided or minimized, and a compensatory mitigation plan will be required when compensatory mitigation is required. Compensatory mitigation plans are routinely requested by most Water Board staff during the current application process and it is not expected that formalization of this requirement will significantly increase Water Board staff workload or application processing timelines. In addition, as stated in section IV.B.5(b), the Water Boards "will consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits within a single mitigation project..." Therefore, the Water Boards may concur with compensatory mitigation requirements of another agency thereby reducing Water Board staff workload and application processing timelines through collaboration with other agencies. For specific information on compensatory mitigation requirements see general response #8 and section 6.7 of the Staff Report.

In response to the concerns that implementation of the Procedures will delay other agency permitting timelines, applicants are encouraged to include the Water Boards in consultation with other agencies early in the project development process. Early coordination between all resource agencies will improve and streamline processing timelines.

Finally, the Procedures are consistent with the requirements of the Permit Streamlining Act. With regards to the list of items required for a complete application, the Permit Streamlining Act requires that "each state agency … shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project (Gov. Code, § 65940 (a) – emphasis added). In addition, section 65943(a) of the Permit Streamlining Act provides that the Water Board has 30 days in which to determine whether an application is complete, and section 65943(b) provides an additional 30 calendar days for review after receipt of supplemental information. The Procedures are consistent with these requirements in that they specify that applications be reviewed for completeness within 30 days of receipt, supplemental information is requested within 30 days of receipt of items in IV.A.1, and deemed complete within 30 days of receiving all of the required items.

Staff Discretion

Staff experience has demonstrated over time that the list of items identified in the California Code of Regulations, title 23, section 3856 as being required for a complete application is frequently insufficient to issue a permit. To address this, the Procedures have been written to provide a more complete list of information potentially required. The items required for a complete application set forth in sections IV.A.1 and IV.A.2 are information that has been routinely requested by Water Board staff during the current application process. Section IV.A.1 lists items that are always required for a complete application. Section IV.A.2 lists additional information that may be required. Retaining discretion for the permitting authority with respect to the items listed in section IV.A.2 is appropriate because the information in section IV.A.2 may not be appropriate for all applicants to submit. For example, a water quality monitoring plan for projects where in-water work is planned is required on a case-by-case basis. In most cases with in-water work, such a plan is necessary to adequately address project impacts. However, this requirement may not be appropriate for some in-water activities (e.g. incidental survey activities). Thus, the Procedures have been written to provide staff discretion so as not to burden applicants with unnecessary requirements. Applicants are encouraged to discuss their project with the Water Boards so that they may be able to identify whether any of the items listed in section IV.A.2 will be required as early as possible. The Procedures provide greater clarity of information necessary to make permitting decisions.

In conclusion, the Procedures were not revised in response to these comments. The Procedures contain requirements for alternatives analyses and compensatory mitigation plans, and commenters were concerned that this would result in an increase in staff workload and processing timelines. However, as discussed above, the Procedures generally reflect current practice at the Water Boards. By making the additional application items frequently requested (such as alternatives analyses and compensatory mitigation plans) procedural requirements, the Procedures will result in a streamlined application process. Applicants will be able to prepare materials ahead of their initial submittal, thereby reducing the number of information requests and time spent on the application process. Furthermore, the Procedures include several provisions that ameliorate the potential effects on staff workload and review times, including an additional exemption for low risk projects, coordination with other agencies on mitigation plans, and limits on staff discretion. By providing a consistent process for review across the state, and adding regulatory certainty to the application review process, the Procedures are not expected to result in a significant increase in staff workload and processing timelines.

Compliance Costs

Commenters were also concerned that preparation of application materials would increase the cost of compliance. Specifically, commenters pointed to the alternatives analysis requirement as an expansion of existing requirements with a potential to increase the cost of compliance.

As discussed above, information requested for a complete application (sections IV.A.1 and IV.A.2) is routinely requested by Water Board staff during the current application process. Also, many elements of the Procedures are the same as the federal requirements, meaning that much of the Procedures are applicable to projects that impact waters that are also under federal jurisdiction. Therefore, for a majority of applications, the Procedures will not significantly change regulation of projects that result

in the discharge of dredged or fill materials to waters of the state, and the majority of previously permitted projects would have complied with the Procedures. In addition, and as stated in section IV.A of the Procedures, if an applicant's federal license or permit application includes any of the information requested for a complete application, the applicant may submit the federal application materials to satisfy the corresponding state application information. This provision thereby reduces duplicative application submittals and cost of compliance for applicants.

Regarding concerns over increased compliance costs associated with the alternatives analysis requirement, most applicants will not see new alternatives analysis requirements (see general response #1). For those that do, the State Water Board encourages applicants to complete the alternatives analysis in the early stages of project development. The Procedures state that the level of effort required for an alternatives analysis will be commensurate with the project's impacts. In addition, the alternatives analysis may be coordinated with other project planning efforts. For example, for many projects, the alternatives analysis required under the Procedures may be partially or fully satisfied through the CEQA process. Although the analysis of alternatives for the purposes of identifying the LEDPA is distinct from the analysis required under CEQA, a site-specific project EIR may contain the site description and project planning documentation needed for the alternatives analysis and LEDPA selection. For example, the lead agency conducting the CEQA review could ensure that impacts to water resources, specifically, are first avoided and then minimized, to the extent practicable and demonstrate that the chosen alternative is the LEDPA. For additional information about economic considerations surrounding the alternatives analysis requirement, see section 11 of the Staff Report.

#7: Case-by-case Determinations

Dry Season Wetland Delineations

The Procedures allow the Water Boards, on a case-by-case basis, to require supplemental field data from the wet season to substantiate a wetland delineation that was conducted in the dry season. Commenters expressed concern that this requirement could cause project delays, increase costs, and possible conflicts with Corps wetland delineation determinations.

The Procedures were revised to clarify that this requirement is consistent with the 1987 Manual and Supplements. The ideal time to delineate a wetland is during the wet portion of the growing season of a normal climatic period. Otherwise, indicators provided in the Corps delineation manuals must be relied on to identify wetland boundaries. Generally, wet season delineations are more likely to be necessary in areas where wetland indicators are difficult to resolve. Collection of supplemental information in certain situations is an accepted practice and is consistent with recommendations presented in the Corps regional supplements for wetland delineation, which recommends that practitioners return to the delineation site, if possible, during the "normal wet portion of the growing season" (Arid West Regional Supplement, pp. 58, 87, 104; Western Mountains, Valleys, and Coast Regional Supplement, pp. 66, 100) to resolve wetland indicators that were unresolved during the dry-season delineation. To avoid the risk of unanticipated project delays, applicants may consult with the appropriate Water Board regarding whether supplemental data may be necessary before submitting an application.

Climate Change Analysis

The 2017 draft of the Procedures provided that a climate change analysis may be required by the permitting authority on a case-by-case basis. The State Water Board received a number of comments that stated case- by-case determinations provided the permitting authority with too much discretion and would result in regulatory uncertainty and statewide inconsistency. Some commenters recommended requiring a climate change analysis in all cases. Other commenters recommended that the climate change analysis requirement be removed because the Water Boards should rely on analysis required under CEQA or other regulatory efforts, such as basin plans. Many commenters noted that the Procedures should provide better guidance regarding what would be required for a climate change analysis.

In response to comments, the Procedures have been revised to state that where permittee-responsible compensatory mitigation is proposed, the permitting authority may require a climate change analysis that considers the potential impacts of climate change on the long-term viability and success of the compensatory mitigation project. It is expected that the analysis would address how climate change may impact the hydrology of the site, e.g., changes in magnitude, duration and intensity of water movement through the site, and how those climate change effects are addressed to ensure the viability of the mitigation. For instance, a compensatory mitigation project that is subject to sea level rise should consider the need for transition zones that allow for successful succession of wetlands in order to ensure long term viability. As discussed in the staff report, analysis of indirect impacts could include other climate change related issues as appropriate.

#8: Compensatory Mitigation

Compensatory Mitigation Requirements

Subpart J of the State Guidelines, Compensatory Mitigation for Loss of Aquatic Resources, defines compensatory mitigation as follows: the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. In general, the Procedures adopt criteria used by the Corps in the federal Guidelines for making compensatory mitigation determinations.

Comments received regarding compensatory mitigation requirements expressed concern agencies could issue conflicting requirements in compensatory mitigation plan content, type, location, and amount. Some commenters proposed that the Water Boards should defer to the Corps on compensatory mitigation requirements, while other commenters supported determinations made by the Water Boards.

The Procedures have not been revised in response to comments received on compensatory mitigation requirements. The Water Boards will continue to independently review and approve compensatory mitigation proposals submitted by applicants. The Water Boards' role is to ensure that the proposed compensatory mitigation comports with applicable basin plans and policies to protect and sustain water quality. Additionally, the Water Boards must independently review those aspects of a proposal that address compensatory mitigation for non-federal waters of the state. While retaining an independent review of compensatory mitigation requirements, the Water Boards will continue to "consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits within a single mitigation project, thereby reducing

the cost of compliance to the applicant." (Section IV.B.5(b).)

Compensatory Mitigation Ratio

Many commenters requested the Procedures' minimum one-to-one ratio for wetland or stream losses for compensatory mitigation requirement be increased. Some commenters approved the minimum one-to-one ratio, but were not in favor of the exceptions in the Procedures (section IV.B.5.c) that could allow mitigation of less than one-to-one, because they believed it may result in an overall net loss of wetlands in the state.

The 2017 draft Procedures allowed for a reduction in the compensatory mitigation only where an appropriate condition or assessment method clearly demonstrated, on an exceptional basis, that a lesser amount is sufficient. The Procedures have been revised to require a minimum compensatory mitigation ratio, measured as area or length, to compensate for wetland or stream losses when compensatory mitigation is required. This was revised because the potential for this allowance to be used would have occurred very rarely, and a minimum of one-to-one ratio for wetland and stream losses whenever compensatory mitigation is required, would provide greater certainty and consistency. The requirement of a minimum one-to-one ratio to offset adverse impacts to wetlands and stream losses is in line with Water Board goals to ensure no overall net loss of aquatic resources. The Water Boards will determine compensatory mitigation ratios based on factors outlined in Appendix A, Subpart J, section 230.93(f). These factors include temporal loss, in-kind vs out-of-kind, mitigation method, locational factors (such as proximity to the impact site), hydrologic conditions, soil characteristics, adjacent land uses, and biological conditions. Where appropriate, a higher mitigation ratio may be required. Please refer to more detailed discussion on what is taken into consideration when determining compensatory mitigation ratios in section 6.8 of the Staff Report.

Overall, it is expected that long-term net gain in quantity, quality, and performance of wetland acreages and values will be achieved by, among other things, implementing more robust compensatory mitigation requirements that will improve the likelihood of achieving stated ecological goals and monitor the success of compensatory mitigation projects.

#9: Water Board Regulatory Authority

A number of comments asserted that the State Water Board does not have the authority to adopt the Procedures. The State Water Board disagrees and has not made revisions to the Procedures in response to these comments. The State Water Board has the authority to adopt the Procedures, and the Water Boards have the authority to regulate the discharge of dredged or fill material through waste discharge requirements and CWA section 401 certifications.

The Procedures are proposed for inclusion in the Water Quality Control Plan for Ocean Waters of California and the forthcoming Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries. The State Water Board has the authority to adopt state policies and plans for water quality control pursuant to Water Code sections 13140 and 13170. Waste discharge requirements must implement relevant water quality control plans. (Water Code, § 13263.) In addition, for waters of the state that are also waters of the United States, the Water Boards have the authority to issue a certification that sets forth limitations and monitoring requirements necessary to comply with specified sections of the CWA and "any other appropriate requirement of State law," which

includes water quality control plans.

Some comments also asserted that the Water Boards do not have the authority to regulate dredged or fill materials because dredged or fill materials are not a "waste" as defined by Water Code section 13050(e). It is the longstanding interpretation of the State Water Board that the definition of "waste" set forth in Water Code section 13050(e) includes dredged or fill material. (Mem. from William R. Attwater, State Water Resources Control Board, to Danny Walsh, Board member (July 28, 1987).) As explained in more detail in the referenced memorandum, principles of statutory construction support the conclusion that "waste" includes substances such as dredged and fill materials that could adversely affect water quality. The Act defines waste broadly. The definition uses the term "includes," which is ordinarily a term of enlargement rather than limitation. (*Flanagan v. Flanagan* (2002), 27 Cal.4th 766, at p. 774.) Further, the language of the statute should be construed so as to accomplish the purpose of the statute. (*See People v. Hubbard* (2016) 63 Cal.4th 378, at p. 386 ["Essential is whether [the court's] interpretation, as well as the consequences flowing therefrom, advances the Legislature's intended purpose."]; *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, at p. 1043 [statutes are to be construed so as to effectuate the purpose of the law].) The legislative history of the Porter-Cologne Act indicated an intention to include in the definition of waste all materials that the Attorney General had previously interpreted as waste under the Dickey Water Pollution Act, the predecessor statute to the Act. Attorney General opinions had previously concluded that waste included earthen materials. An inclusive definition is also consistent with past State Water Board practice. For the past 15 years, there have been general waste discharge requirements applicable to all 401 certifications. (State Water Board Order 2003-0017-DWQ.) The State Water Board has long interpreted its authority to adopt or approve discharge prohibitions, prohibiting the discharge of waste in certain areas or under certain conditions (Water Code § 13243), to include authority to prohibit discharge of earthen materials. In 1970, it approved the discharge prohibition of "soil, silt, clay, sand, and other organic and earthen materials to lands below the high water rim of Lake Tahoe or within the 100-year flood plain of any tributary to Lake Tahoe." In 1980, the State Water Board adopted a similar prohibition that prohibited "all discharges or placement of building or fill material in environment zones for the purpose of new development." Moreover, the Water Boards' authority under the Porter-Cologne Act to create water quality control plans is not confined to regulating "waste." Indeed the Water Boards have the authority to address any factor affecting water quality. (Water Code section 13050, subd. (i).)

Some comments asserted that section 404 preempts the regulation of dredge or fill activities in waters of the United States. Section 404 does not preempt state law or regulation with respect to the regulation of dredge and fill operations in waters of the United States. There are two types of preemption: (1) conflict preemption and (2) field preemption. (*See generally Jones v. Rath Packing Co.* (1977) 430 U.S. 519, at p. 525-26.) Either type of preemption can be express or implied. In a case with conflict preemption, a state law is invalid to the extent that it actually conflicts with a federal statute. Such a conflict may be implied where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The comments did not identify any actual or implied conflicts between the Procedures and existing federal regulation such that a discharger could not comply with both state and federal law. Accordingly, the State Water Board assumes that the comments refer to field preemption. The CWA does not contain an explicit statement of preemption with regarding to dredge and fill permits (*Bartell v. State* (1979) 284

N.W.2d 834, at p. 837), so the State Water Board assumes that the comments refer to implied field preemption. Preemption may be inferred when federal legislation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation. (*Int'l Paper Co. v. Ouellette* (1987) 479 U.S. 481, at p. 492.) In determining whether implied field preemption exists, courts examine the federal legislation as whole, including its purpose and history. (*Id.*) In 1977, Congress amended the CWA to expressly provide that it was not Congress' intent to preempt the field with respect to the regulation of dredge or fill materials: "Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged of fill material in any portion of the navigable waters within the jurisdiction of such State . . . ." (*Bartell*, supra, at p. 837 [holding no preemption for activities that do not involve the navigability of the waters].) Moreover, the two provisions in the CWA that waive sovereign immunity, 404(t) and 313(a), are both premised on the assumption that States may have additional local pollution laws. Such language runs directly contrary to the contention that Congress intended to preempt the field regarding the regulation of dredge or fill material.

Some commenters stated that Chapter 5.5 of the Water Code only grants the Water Boards the authority to regulate the discharge of dredge or fill material if the Water Boards are approved to administer the section 404 program. Chapter 5.5 was enacted in response to the 1972 amendments to the CWA, which, as subdivisions (a) and (b) of Water Code section 13370 explain, provides a mechanism for states to assume the administration of section 404 permits. Importantly, subdivision (c) also finds that "[i]t is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter . . . ." This legislative finding indicates that the Legislature understood that the Water Boards already had authority to regulate discharges of dredged or fill material, although additional authority would be necessary to provide full conformity with all CWA requirements and regulations setting forth requirements to States to assume the permitting program.
Because the State Water Board is not seeking approval to administer the section 404 program at this time, Chapter 5.5 is not currently applicable.

#10: Overlapping Regulation

A number of commenters have asserted that the Procedures create duplicative and overlapping requirements with the federal CWA 404 Program and California Department of Fish and Wildlife's (CDFW) Lake and Streambed Alteration Program. Commenters have also reflected concern that the Procedures fail to ensure that the Water Boards will defer to existing programs when implementing the Procedures in a way that minimizes duplicative regulation.

It is appropriate, and within the Water Boards' authority, to regulate waters of the state that are also subject to federal regulation. Implementing the Procedures is within the State's authority under CWA section 401. Pursuant to the CWA, section 404(d), the Water Boards' water quality certifications should set forth limitations necessary to assure compliance with various provisions of the CWA "and with any other appropriate requirement of State law set forth in the certification." Other appropriate requirements of state law include the water quality control plans, which have the same force and effect as regulations. The Procedures will be included in a state policy for water quality control, the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. As part of a water quality control plan, it is appropriate to include limitations

necessary to assure compliance with the Procedures in water quality certifications.

The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. In implementing the Procedures, the State Water Board will try to coordinate as much as possible with other agencies with overlapping jurisdiction. Where the requirements are the same, the Procedures allow for a streamlined process. For example, where the applicant's federal license or permit application includes any of the project application submittals, the applicant may submit the federal application to satisfy the corresponding state application.

However, because the State Water Board and the Corps have different jurisdictional bounds and different statutory mandates, there are some instances in which the State requirements differ from federal requirements. Likewise, given the different jurisdictions and statutory mandates, there may be some instances in which the Procedures' requirements different from requirements set forth by the California Department of Fish and Wildlife. The Water Boards attempt to eliminate direct conflicts with other regulatory programs as much as possible in the Procedures. If the Procedures are adopted, the Water Boards would endeavor to work with other agencies who have concurrent jurisdiction over wetlands, including the Corps, to make the application process as streamlined as possible and to avoid conflicts between regulatory programs.

#11: Requests to Identify Non-wetland Waters of the State

Some comments noted that more direction is needed regarding defining, delineating, and making jurisdictional determinations for all waters of the state, not only wetlands. Definitions, delineation procedures, and a jurisdictional framework for non-wetland waters, such as streams, were not included in the Procedures because it is outside of the scope of the project and would add significant delays of the adoption of the Procedures. In 2008, the State Water Board adopted Resolution No. 2008-0026, which directed staff to develop a wetland and riparian protection policy in three phases. The Procedures fulfill the State Water Board's directive for the first phase, which is limited to providing a Water Board wetland definition. Providing definitions for other water features is outside of the scope of the Board's directive for the first phase. The Board may consider definition of other waters of the state as a future project.

#12: Procedural Exclusions for Operation and Maintenance Activities

Section IV.D.2.b, Areas and Activities Excluded from the Application Procedures, of the 2017 draft Procedures included a procedural exclusion for discharges of dredged or fill material that are associated with routine maintenance of storm water facilities regulated under another Water Board Order, such as sedimentation/storm water detention basins.

Some commenters requested the procedural exclusion in section IV.D.2.b be extended to include routine operation and maintenance of other types of facilities, such as facilities built for water quality, flood control, water supply, industrial needs, groundwater recharge, or multi-benefit constructed facilities. Commenters were concerned that routine operation and maintenance activities in these types of facilities may be impeded if they were considered waters of the state under the new definition.

In response to comments received, the Procedures have been revised to exclude routine and

emergency operation and maintenance activities conducted by public agencies, water utilities, or special districts that results in a discharge of dredged or fill material to artificial, existing waters of the state: i) currently used and maintained primarily for one or more of the purposes listed in section II.3.d (ii), (iii), (iv), (x), or (xi); or for the purpose of preserving the line, grade, volumetric or flow capacity within the existing footprint of a flood control or stormwater conveyance facility. This exclusion does not relieve public agencies, water utilities or special districts of their obligation to submit an application for a water quality certification consistent with California Code of Regulations, title 23, section 3856 or waste discharge requirements consistent with Water Code section 13260, whichever is applicable, to the permitting authority; or their and responsibility to avoid and minimize adverse impacts to aquatic resources and beneficial uses. The permitting authority has full discretion to determine whether an activity described above qualifies for this exclusion. If the permitting authority determines that an activity does qualify for this exclusion, the permitting authority retains its full authority and discretion under the Porter-Cologne Water Quality Control Act to determine how to regulate the discharge of dredged or fill material. Where a permitting authority has already determined it appropriate to regulate these types of activities in specific instances, this exclusion in no way disturbs or limits the permitting authority's current regulation of these types of activities. The exclusion does not apply to the discharge of dredged or fill material to a water approved by an agency as compensatory mitigation. This exclusion is now provided in Section IV.D, **"**Activities and Areas Excluded from the Application Procedures for Regulation of Discharges of Dredged or Fill Material to Waters of the State."

Applicants are encouraged to consult with the Water Boards to determine if an aquatic feature or facility is considered a water of the state. For dredge or fill activities in facilities that are considered a water of the state but do not meet the criteria in section IV.D.1.c, it is expected that the Water Boards will issue an Order that covers the initial impact and future operation and maintenance activities that involve the discharge of dredged or fill materials. For the operation and maintenance of facilities that also include waters of the U.S., the Water Boards will issue a section 401 certification.

The Procedures were not revised to exclude operation and maintenance activities that involve the discharge of dredged or fill material to *all* artificial aquatic features or facilities. For operation and maintenance activities that involve a discharge of dredged or fill materials to the types of facilities that do not meet the criteria in section IV.D.1.c, the Procedures provide a consistent process that reflects current practice and also requires avoidance and minimization for adverse impacts to waters of the state. Establishing procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof.

Responses to Individual Comment Letters

Letter 1: Agriculture Coalition

Comment Number	Comment	Response
1.1	Consequently, we continue to have concerns about the scope of the proposed Procedures.	Comment noted.
1.2	In particular, the proposed Procedures are overbroad relative to the needs and legal authority identified by the State Board, contain duplicative and sometimes conflicting requirements due to the excessive scope, and are open to subjectivity that will likely lead to inconsistent applications. These problems will cause uncertainty and needless delay and expense for the agricultural community while failing to provide a meaningful improvement in environmental protection.	See general responses #9 and #10.
1.3	We suggest that the State Water Resources Control Board ("State Board") carefully consider how the Procedures potentially apply (perhaps unintentionally apply) to the agriculture industry. The Clean Water Act ("CWA") was written in a very thoughtful and deliberate manner in considering its effects on the agriculture industry. The CWA intentionally provides necessary agricultural protections that must also be included in these Procedures. Below is an explanation of the history of agriculture's exemptions from the CWA. This may be helpful in appreciating the need for a clear exemption for agriculture in the Procedures.	Comment noted. Section IV.D of the Procedures and section 6.8 of the Staff Report identify areas and activities that are exempt from complying with these specific Procedures. Examples of activities include, but are not limited to, normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; maintaining or reconstructing structures that are currently serviceable; and constructing temporary sedimentation basins for construction. These areas and activities are not exempt as waters of the state and could be regulated under another program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands

Comment Number	Comment	Response
		Program. In other words, the Water Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures.
1.4	We are very concerned that Procedures include a California-only definition of a wetland which differs from the federal definition. The definitions of ephemeral and intermittent streams also differ from federal definitions.	Comment noted. See general response #4 in regards to the technical wetland definition. Also, see general response #11 concerning “other” waters of the state.
1.5	By definition, the Procedures create a program which will regulate land features not currently recognized by the federal government as a wetland.	The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The Procedures are intended to clarify what is required for a complete application and the criteria for review and approval of applications, bringing consistency across the Water Boards. Also, see general response # 4.
1.6	Additionally, the State's Procedures create new regulatory requirements and provide broad authority and discretion to the water boards regarding specific permit components. For example, the Procedures require various subjective analyses such as effects to beneficial use, impacts associated with climate change, off-site alternative analysis on projects not owned or controlled by the applicant, suitability of mitigation despite approval at the federal level, and case-by-case	See general responses #7, #8, and #9.

Comment Number	Comment	Response
	determinations regarding buffer distances and site design after local agency approval.	
1.7	The Procedures also require an on and off-site alternatives analysis for projects that exceed direct impacts to 0.2 or more acres of Waters of the State similar to the EPA's 404(b)(l) Guidelines. The national average cost of completing a 404(b)(1) alternative analysis is $271,596 and takes an average of 788 days. The cost and timelines for adhering to the State's new Procedures could be equally as expensive and time consuming. The duplicative process proposed by the State will increase permitting timelines and cost.	See general response #6. The Procedures state that the level of effort required for an alternatives analysis shall be commensurate with the project's impacts. It is expected that the alternatives analysis required under the Procedures will often be less complex than a 404(b)(1) Guidelines alternatives analysis.
1.8	The Procedures must serve a public need that is not currently being addressed. Beyond filling the regulatory gap, it is very unclear exactly what problem, if any, the Procedures are attempting to solve.	The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof.
1.9	The Procedures must be clear, well defined, and not allow for subjective case-by-case determinations. The public, and water board staff as well, will be best	Comment noted.

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	served with clear application requirements and Procedures.	
1.10	The Procedures must recognize that the vast majority of the permit applications are also subject to federal oversight. Therefore, mandating a state program that is inconsistent with federal law is problematic.	It is appropriate and within the State Water Board's authority to regulate waters of the state that are also subject to federal regulation. Pursuant to the Clean Water Act, section 401(d), the Water Boards' water quality certifications should set forth limitations necessary to assure compliance with various provisions of the Clean Water Act "and with any other appropriate requirement of State law set forth in the certification." The Procedures will be included in state water quality control plans, specifically the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries, and the water quality control plan for Ocean Waters of California. As part of a water quality control plan, the Procedures will have the same force and effect as a regulation, and accordingly it is appropriate to include limitations necessary to assure compliance with the Procedures in water quality certifications. The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. In implementing the Procedures, the State Water Board will try to coordinate as much as possible with other agencies with overlapping jurisdiction.

Comment Number	Comment	Response
1.11	The Procedures must protect against needless duplication of federal requirements. Such duplication can be costly and create needless delays.	See general response #10.
1.12	The Procedures create inconsistencies with federal requirements and other state programs, such as the California Department of Fish and Wildlife's lake and stream bed alteration program.	See general response #10.
1.13	There is no proven need for these expansive Procedures, especially when one considers its potentially broad scope relative to agriculture. The Procedures create a mandatory permitting program which will apply the wetland definition and dredged and fill Procedures to a regulated industry already committed to conservation and environmental protection.	The Project Need section of the Staff Report describes wetland trends monitored by the U.S. Fish and Wildlife Service. While overall loss of wetlands seems to have slowed in California, the extent and health of remaining wetlands are still threatened by a host of factors, including habitat fragmentation, altered hydrology, altered sediment transport and organic matter loading, dredging, filling, diking, ditching, shoreline hardening, pollution, invasive species, excessive human visitation, removal of vegetation, and climate change. However, the loss of wetlands is not the only reason these Procedures are necessary. The Project Need section of the Staff Report describes the other reasons why the proposed Procedures were developed, including the need to provide consistency for the Water Boards regulation of discharges of dredged or filled materials, and to align these procedures with federal requirements, including alternatives analysis and the use of the watershed approach to mitigation. As set forth in

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		section IV.D, and as described in the Staff Report on page 72, agricultural activities that are exempt under Clean Water Act section 404(f) are excluded from the application procedures requirements set forth in the Procedures.
1.14	This proposal will only increase bureaucratic red tape and will not further protect water or water quality.	An explanation of how the Procedures will promote consistent regulation of the discharge of dredged or fill material is set forth in the Staff Report in the “Project Need” section. An explanation of how the Procedures will fit into the current regulatory scheme is described in the Staff Report under “Regulatory Background.”
1.15	By including a wetland definition and delineation Procedures that are inconsistent with the Corps' wetland definition, the Procedures create uncertainty, confusion and conflict, for no apparent purpose. Growers and ranchers cannot meet the seasonable crop demands and manage their farms with regulatory uncertainly and associated delays and costs.	The expected outcome of the Procedures will be to streamline existing section 401 application procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California’s aquatic resources. See response to comment #1.14 and general response #4.
1.16	The Procedures define wetlands to include "current and historic" definitions under Waters of the U.S. ("WOTUS"). This seems to indicate that any wetland that may have ever been covered under WOTUS is forever included under these Procedures. Keep in mind that there have been many revisions to federal law. And some changes, such as the 2015 WOTUS rule, have only been law for a few days. Consequently, this is very	The Procedures have not been revised in response to this comment. See general response #2.

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	unclear and growers and ranchers will have a difficult time understanding which water features are regulated under the Procedures.	
1.17	On page 6 of the Procedures beginning with line 183, the Procedures allow, in four places, for additional application information to be required on a case-by- case basis.	See general response #7.
1.18	Throughout the Procedures, the term "and/or" is used. Courts have repeatedly ruled that this is not a clear way for law to be written. [footnote] The regulation needs to be clear. Is it "and" or is it "or"? More specifically, in six places beginning on page 24, line 817, the Procedures refer to "physical, chemical, or biological" characteristics or attributes. In two places the Procedures refer to "physical, chemical, and biological" elements or processes. In one place the Procedures refers to "physical, chemical and/or biological" attributes. This is unclear, inconsistent and is very confusing. To be consistent with federal law, it should read "physical, chemical, and biological."	The Procedures use “and/or” when appropriate. For example, “and/or” is used in the definition of the project evaluation area (“the area that includes the project impact site, and/or the compensatory mitigation site,”) because the project evaluation area may refer to either the project impact site, the compensatory mitigation site, or both. In creating the State Supplemental Guidelines, the approach used was generally to limit changes to: 1) omissions of portions of the guidelines that a. provided illustrative examples or other non-binding descriptions; or b. did not reflect state practice or conflicted with state law; or c. were redundant with the Procedures; and 2) global changes to change federal terms to the state equivalent. The Supplemental Guidelines are consistent with the federal guidelines. The quoted material cited in this comment was retained from the federal guidelines, and the use of “and/or” is used appropriately in the definitions of functions, performance standards,

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		and re- establishment (40 CFR § 230.92).
1.19	The proposed Procedure's lack of clarity creates confusion, impacting growers and ranchers as to how to apply regulatory requirements as these decisions are layered one upon-the-other, as well as create a regulatory quagmire for each Regional Water Board to follow and adhere to.	As set forth in section IV.D, and as described in the Staff Report on page 72, agricultural activities that are exempt under Clean Water Act section 404(f) are excluded from the application procedures requirements set forth in the Procedures. Examples of excluded activities include normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; and maintaining or reconstructing structures that are currently serviceable. For these reasons, it is expected that the Procedures would not add regulatory ambiguity to agricultural operations, nor would the Procedures add duplicative requirements.
1.20	We appreciate that in several places the Procedures state that it is intended to be consistent with federal law and guidelines	The commenter's support for the Procedures' alignment with federal law and guidelines is noted.
1.21	The scope of the Procedures goes well beyond the definitions of the CWA Section 401 certification requirements and Section 404 permitting program. These Procedures would give the Regional Water Boards too much subjective authority over discharges unrelated to the intended wetlands management, possibly crossing into upland areas already protected under the California Department Fish and Wildlife's lake and streambed alteration program.	See general responses #9 and #10. In addition, the Procedures have been revised to reduce the number of case-by-case determinations, further limiting the Water Boards' discretion and subjectivity.

Comment Number	Comment	Response
1.22	The Procedures would add yet another layer of broad oversight and regulatory over-reach instead of a targeted, well-confined set of regulatory objectives.	The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California's aquatic resources. Also, see general response #9.
1.23	Although the Procedures reference federal CWA section 404(f) exemptions for normal farming activities, the agricultural exemptions are inconsistent, causing uncertainty. Additionally, the Procedures narrowly describe the federal CWA exemption for prior converted cropland, adding regulatory confusion to everyday farming and ranching practices and placing the future of California agriculture in jeopardy. Lands designated as prior converted cropland is excluded from federal jurisdiction. The Procedures must therefore similarly exclude prior converted cropland from wetland and non-wetland WOTS subject to regulation under the Procedures. In the alternative, the exclusion in Section IV.D.2.a needs to be made consistent with the federal exemption.	Section IV.D. of the Procedures identifies areas and activities that are exempt from complying with the Procedures, including Clean Water Act section 404(f). However, agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. The Water Boards will defer to the Corps regarding determinations that activities are exempt under section 404(f) for discharges of dredged or fill material into waters of the United States.

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	While this appears to have been the intent, the Procedures include conditions and definitions for this exclusion that would deny the exclusion to certain types of cropland that are eligible for the exclusion under federal law.	In regards to prior converted cropland, see general response #3.
1.24	The Army Corps of Engineers and California Department of Fish and Wildlife already have regulatory programs in place that are overlapped by these Procedures, mainly due to the broad scope as noted above. This will present growers and ranchers with regulatory conflicts, uncertainty when conducting normal farming practices, and additional costs for permitting and engineering reports. It also appears that regulatory conflicts could become daily events as the Procedures allow override of decisions made by the Corps of Engineers, essentially wiping out the ability to utilize the streamlined permit process for minor discharges currently allowed under federal law.	As set forth in section IV.D, and as described in the Staff Report in section 6.8, agricultural activities that are exempt under Clean Water Act section 404(f) are excluded from the application procedures requirements set forth in the Procedures. Examples of excluded activities include normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; and maintaining or reconstructing structures that are currently serviceable. For these reasons, it is expected that the Procedures would not add regulatory ambiguity to agricultural operations, nor would the Procedures add duplicative requirements. Nonetheless, it is important to note that application requirements outlined in the Procedures are requested during the Water Board's existing application review process; these requirements are not new and the Procedures are not creating a new regulatory program. Also see general responses #9 and #10.

Comment Number	Comment	Response
1.25	Without a memorandum of understanding between the Water Board and the Corps that provides a framework for harmonizing the state and federal permitting processes and resolving conflicts, the Procedures are duplicative and unnecessarily add regulatory ambiguity to agricultural operations.	The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures.
1.26	We are very concerned that many growers and ranchers will be enveloped in a new, duplicative regulatory process that will needlessly add even more expense and red tape to their operations. As such, we respectfully recommend that the Board reject these Procedures.	The commenter's request for rejection of the Procedures is noted. The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California's aquatic resources. See also general response #10.
1.27	If the State Board determines it needs to move forward on this issue, we continue to suggest the adoption of a program that fills the regulatory gap by protecting non- federal waters of the state as if they were regulated by the Corps' current Procedures under the 1987 guidelines, including adopting a wetlands definition that is identical to the well established definition used by the Corps. This would address the only need for any part of these Procedures.	One purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof.

Comment Number	Comment	Response
		Limiting the scope of the Procedures to only a subset of waters such as wetlands would complicate the regulatory landscape because there would be two different sets of procedures that would apply to projects that affect both wetland and non-wetland waters. Also see response to comment #1.26 and general response #4.
1.28	Wetland Definition: The Procedures include a statewide wetland definition that would consider an area without any vegetation as a "wetland." Recommend that the Procedures adopt the federal definition of wetland.	See general response #4.

Comment Number	Comment	Response
1.29	Wetland Delineation: The Procedures are a mandatory permitting program that applies to ALL waters of the state and imposes additional regulatory hurdles and permit requirements on a wide range of industries and activities that include private development; agricultural operations; infrastructure development, and operations and maintenance (including transportation and water conveyance infrastructure); and conservation/mitigation banking. Recommend a limited application of the Procedures.	One purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. Limiting the scope of the Procedures to only a subset of waters such as wetlands would complicate the regulatory landscape because there would be two different sets of procedures that would apply to projects that affect both wetland and non-wetland waters. See also general response #10.

Comment Number	Comment	Response
1.30	Dredge or Fill Activities: The Procedures also apply to ALL discharges of dredge and fill activities, including those that have already received authorization under CWA. The Procedures unnecessarily duplicate the federal CWA program, adding little, if any, value, while raising the risk that the State Board findings and determinations will vary from, or even conflict with findings and determinations made by the U.S. Army Corps of Engineers and/or CA Department of Fish and Wildlife. Recommend that the Procedures be revised to avoid any federal or state duplication.	See response to comment #1.29. See general responses #9 and #10.
1.31	In general, these Procedures make reference to federal law and federal guidelines, but then negate those references by allowing a state agency to subjectively interpret and apply federal law and guidelines. This ultimately creates the problems of inconsistency, lack of clarity, and the duplication discussed above.	The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible.
1.32	We urge the State Board to phase implementation of the Procedures so that the provisions with greatest potential to conflict with the Corps' permitting program are applied only after the State has entered into a memorandum of understanding with the Corps that provides a framework for harmonizing the state and federal permitting processes and resolving conflicts.	It would not be practical to implement the regulations in smaller, incremental steps, as it would entail years of continuous regulatory change for both the Water Boards and the regulated community, likely leading to increased uncertainty and delays. The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures.
1.33	Make the wetland definition and delineation Procedures consistent with their federal counterparts under the Corps' Section 404 program	See general response #4.

Comment Number	Comment	Response
1.34	Harmonize the exclusions from the Procedures with federal law	See general responses #2, #3 and #4. In regards to agricultural activities that are exempt under Clean Water Act section 404(f), these activities are excluded from the application procedures requirements set forth in the Procedures in section D, and as described in section 10.6 of the Staff Report. Examples of excluded activities include normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; and maintaining or reconstructing structures that are currently serviceable.
1.35	Identify non-wetland WOTS subject to the Procedures and include guidance for determining the limits of such features that is consistent with Corps practice	See general response #11.
1.36	Eliminate the requirement of an alternatives analysis for all discharges subject to streamlined permitting Procedures under Corps-issued general permits	See general response #1.
1.37	Make the mitigation requirements and priorities of the Procedures consistent with the Corps' Mitigation Rule.	The Procedures include Appendix A: The State Supplemental Dredge or Fill Guidelines, which adopts relevant portions of the federal 404(b)(1) Guidelines, including the Corps' Mitigation Rule. Section IV.A.d states that a draft compensatory mitigation plan "shall comport with the State Supplemental Dredge or Fill Guidelines, Subpart J" which includes the Corps' Mitigation Rule's soft preference hierarchy for compensatory mitigation approaches.

Comment Number	Comment	Response
1.38	1) There must be a Memorandum of Understanding with the Corps.	The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures
1.39	2) Eliminate the reliance on historic definitions of waters of the U.S.	The Procedures have not been revised in response to this comment. See general response #2.
1.40	3) The proposed wetland definition must be consistent with the Corps' definition.	See general response #4.
1.41	4) Exclude from the Procedures features that are excluded by the Corps.	It is unclear which exclusions the commenter is referring to. In regards to agricultural activities that are exempt under Clean Water Act section 404(f), these activities are excluded from the application procedures requirements set forth in the Procedures in section D, and as described in section 10.6 of the Staff Report. Examples of excluded activities include normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; and maintaining or reconstructing structures that are currently serviceable. See also general response #3.
1.42	5) Harmonize the exclusions from the Procedures with federal and state law.	See response to comment # 1.34.
1.43	6) Prior converted cropland should be excluded.	See general response #3.
1.44	7) Exclude discharges authorized by streambed alteration agreements.	See general response #10.
1.45	8) Add exclusions for agricultural containment features and actions for maintenance of facilities covered by existing Orders.	Section IV.D of the Procedures identifies areas and activities that are excluded from complying with these specific Procedures. This includes agriculture-related

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		activities exempt under Clean Water Act section 404(f). However, these areas and activities are not exempt as waters of the state and could be regulated under another program such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures. For activities covered by an existing order regulating the discharge of dredge or fill materials, applicants should continue to abide by the terms of the order and would only need to submit a new application subject to section IV of the Procedures if applying for a new order.
1.46	9) Eliminate the recapture of artificial wetlands resulting from historic human activity and that have become relatively permanent parts of the natural landscape.	See general response #2.
1.47	10) Clearly define the scope of upland waters subject to the Procedures and how to delineate them.	Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. It is not expected that these delineations will diverge greatly from what is already being prepared for the Corps. Applicants are encouraged to contact the appropriate Water Board for consultation on determining jurisdiction. Definitions and delineation procedures for non-wetland aquatic features, such as streams, have not been addressed in this version because it is outside of the scope of the project and would add significant delays for adoption of the Procedures.

Comment Number	Comment	Response
		Delineation reports should be provided by the applicant and verified by Water Board staff. Water Board staff will rely on determinations made by the Corps when identifying waters of the U.S. Also see general response #11.
1.48	11) Identify upland features that are considered WOTS for purposes of the Procedures.	See response to comment #1.47 (above) and general response #11.
1.49	12) Adopt federal guidance for determining the limits of upland waters.	See response to comment #1.47 (above) and general response #11.
1.50	13) The Alternatives Analysis requirement should be revised to be consistent with federal requirements and avoid conflicting LEDPA determinations.	See general response #1.
1.51	14) The Procedures should require deferral to Corps mitigation for impacts to federal waters.	Section IV.B.5 of the Procedures states that, where feasible, the permitting authority shall consult and coordinate with other public agencies regarding compensatory mitigation in order to achieve multiple environmental benefits with a single mitigation project. As such, the permitting authority will coordinate with the Corps whenever possible in developing compensatory mitigation requirements. However, because the Water Boards and the Corps have different statutory authorizations and different jurisdictions, it would not be appropriate to defer to the Corps regarding compensatory mitigation for discharges of dredged or fill material to waters of the U.S. in all cases. Instead, as is consistent with current practices, the permitting authority will continue to develop appropriate compensatory mitigation requirements based on the particular circumstances

Comment Number	Comment	Response
		of the proposed project; the permitting authority is not bound by the Corps' compensation mitigation determinations.
1.52	15) Eliminate the discretion and uncertainty in determining when an application is complete.	As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Within 30 days of receiving an application, Water Board staff will confirm all items listed in section IV.A.1 have been received and will notify applicants of all section IV.A.2 items needed to complete their application, subsequent application reviews will be performed within 30 days of additional information receipt. See also general response #7 for discussion about why some discretion in determining an application complete is necessary and appropriate.
1.53	While we support the goal of filling the regulatory gap, the Procedures go far beyond what is needed and, in the process, would create substantial burdens significantly jeopardizing California's agricultural industry while also straining Water Board resources.	The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help

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		ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. Furthermore, as explained in Section 1 “Economic Considerations” of the Staff Report, the Procedures are not expected to add additional regulatory burdens and costs. Instead, the Procedures will streamline and clarify section 401 permitting in California, and thereby reduce overall costs of section 401 permitting.
1.54	As such, we respectfully recommend, in priority order that the Board either: 1) Reject these Procedures; 2) Adopt a program that fills the regulatory gap by protecting non-federal waters of the state; or 3) Make the revisions to the wetland definition and delineation procedures, exclusions from the alternatives analysis requirement and other application requirements, and compensatory mitigation requirements as set forth above to reduce those burdens.	The commenter’s request for rejection of the Procedures is noted. In response to the commenter’s recommendations, see responses to comments #1.1 – #1.53 (above).

Letter 2: Alameda County Flood Control & Water Conservation District, Zone 7

Comment Number	Comment	Response
2.1	Wetland areas within stream corridors are dynamic and subject to natural processes. Flood agencies have endeavored to create and use natural in-stream or near-stream floodplains to attenuate high flows, but these areas are dynamic and cannot be guaranteed to persist in exactly the same footprint or with exactly the same vegetative assemblies. Protection of these wetland areas in their exact state would, therefore, be counter to natural processes. Likewise, previous RWQCB permits have encouraged the use of floodplain areas for the attenuation of sediment within the system and use of these floodplain areas for routine maintenance and removal of excess sedimentation in incremental episodes. An example of this was permitted for Wildcat Creek in Contra Costa County. Removal of such accumulated floodplain sediment mimics natural scour and agencies using this method of stream management should not be penalized with additional compensatory mitigation requirements.	The Procedures do not prevent applicants from completing projects designed to restore the natural function of a stream, including sediment transport and channel forming flow. The Procedures will ensure that such projects will be regulated in a more consistent and transparent fashion. The details of any specific project is beyond the scope of this response to comment, the Procedures do not explicitly require additional compensatory mitigation for routine maintenance and operation where such maintenance and operation is already addressed in an existing Order. In the case of a new Order, the Procedures could allow for the approval of projects that result in a net benefit for the aquatic resource, as described by the commenter. The appropriate Water Board will review the details associated for each project to determine if this strategy is appropriate or if compensatory mitigation is required.
2.2	Per the definitions for both "wetland" and "artificial wetland," a reservoir may have created seasonal wetlands in excess of one acre by its operations at the wetted edge. It could therefore be both a natural wetland and an artificial wetland. For clarity, it would be useful to call out reservoir wetlands separately in the definitions and consider an exemption for critical	The Procedures have not been revised in response to this comment. Artificially created wetlands are excluded as waters of the state, if they are less than or equal to one acre in size or do not meet certain criteria provided for in the revised framework in section II.4 of the Procedures. Artificial wetlands constructed primarily for one or more of the purposes listed in section II.3.d are excluded from jurisdiction despite their size.

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	water supply, flood protection, and other public health and safety actions.	In addition, many reservoirs may have been created by modification of a water of the state and thereby would not qualify as an artificial wetland. However, note that several of the Corps' Regional General Permits for emergency situations have already been certified. Projects that qualify for the certified general permits are not subject to the Procedures. See also general response #2.
2.3	Actions that uphold critical water supply, flood protection, and other public health and safety issues (such as dam safety) should not be impeded by these procedures when routine operations and maintenance require impacts to wetlands. As it stands, Section IV. A., Item 1, g., IV (lines 152-155, pg. 5) regarding exemptions from alternatives analysis could be interpreted to impede routine actions since they would not fall into this exemption.	See general responses #1 and 12.
2.4	This characterization of an exemption for restoration is also too restrictive as restoration actions often take longer than one year to reach full implementation.	The Procedures have not been revised in response to this comment. Applicants are required to submit a draft restoration plan to restore areas of temporary impact to pre-project conditions, if temporary impacts are identified. Water Board staff will identify permanent and temporary impacts to waters in consultation with the applicant and other permitting agencies considering project and site parameters. Temporary impacts are commonly understood as those which eventually reverse, allowing the affected resource to return to its previous state. Successful restoration of

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		temporary impacts is dependent on site specific information including the type of water, the severity and duration of the impact, type of equipment and environmental conditions. If all implementation actions in the restoration plan cannot reasonably be concluded within one year an alternatives analysis may be appropriate to facilitate the avoidance and minimization of temporal loss, which applies to the loss of environmental benefits for a period of time.
2.5	In this same section, an exemption for maintenance to existing or future stormwater and sediment control facilities (like bioswales and detention basins) should be called out here since they could meet the criteria for Tier 1 projects.	The Procedures have not been revised in response to this comment. It is possible that the features described by this commenter would not be considered waters of the state as defined in the Procedures, or they could qualify for a procedural exclusion, if specific criteria are met (see section IV.D). See also general responses #2 and #12.
2.6	The proposed guidelines leave it such that the applicant may or may not be required to submit additional information on a "case by case" basis, such as a second season wetland delineation and an assessment of the change in flow as a result of the project. While it is understandable that the SWRCB wishes to retain some flexibility in application requirements because all projects are not created equal, this clause may leave - agencies like Zone 7 in a difficult situation when permit authorizations for annual summer channel maintenance (stemming from 71 winter storms) are required in a fairly tight window. An unintended consequence of this guideline is that agencies may	Language in the Procedures has previously been revised to clarify that applicants may consult with the Water Boards early in the application process. Pre-application meetings or informal consultation with the Water Boards benefit the applicant by providing useful information which could prevent delays during application review. For complex projects, this should be done ideally during the early planning stage of the project. See also general response #7.

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	choose to over-compensate and develop much more information than actually required, just to avoid a scenario where the project could be delayed because the RWQCB determined that additional information was necessary. This could be seen as unduly wasteful by local residents and taxpayers, as well as by those responsible for the financial health of the local agency.	
2.7	Also, some permit application requirements, bolstered by these proposed additional requirements, may not be reasonably accomplished by individuals and small groups (creek groups, local landowners, etc.) who seek permits to do work. For some, the process is already overly intimidating and complicated, and requires multiple experts to support even a simple project application.	It is unclear which requirements this commenter is referring to. As stated in section 6.6 of the Staff Report, the Procedures streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information required in Procedures sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal, thereby reducing the number of information requests and expediting the application review process.
2.8	**FOCUS ON PARTNERING OPPORTUNITIES RATHER THAN LIMITING TO SITE-BY SITE MITIGATION FOR WORK INTENDED FOR PUBLIC SAFETY:** The state's position of no net losses is appreciated from a environmental standpoint, but Regional Water Boards mitigation requirements should be applied fairly and take into account local conditions and issues, and we support the guidelines containing flexibility in finding appropriate mitigation locations that may not be within the same watershed as the impact. To this	First, please note that compensatory mitigation is not a tool aimed at avoiding impacts; rather, compensatory mitigation is the last step in a sequence of actions that must be followed to offset impacts to aquatic resources. Both state and federal regulation require an applicant to first avoid adverse impacts to the extent practicable, then minimize impacts, then compensate for remaining unavoidable adverse impacts. Furthermore, this requirements applies to all types of projects, including flood-protection work.

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	end, the Regional Water Boards may find more success in seeking solutions to preserve or enhance the state's water quality by finding regional opportunities to partner with local agencies to enhance watersheds rather than relying on mitigation as the primary tool aimed at avoiding impacts and piecemealed enhancement or restoration.	Also, the Procedures promote regionwide planning efforts of the type recommended by the commenter by providing exemptions from certain requirements for projects that are done in conjunction with a watershed plan. The Procedures also recognize that, while in-watershed mitigation is generally preferred, there are situations where out-of-watershed mitigation may be appropriate. Finally, as set forth in Subpart J of the State Supplemental Guidelines, the permitting authority should generally favor mitigation banks and in-lieu fee programs over permittee-responsible mitigation. Mitigation banks and in-lieu fee programs usually involve consolidating mitigation projects where ecologically appropriate, and they additionally reduce temporal losses of functions. Because they are overseen by multiple agencies, and can pool finances and technical expertise, they also provide more robust mitigation. However, in some cases permittee-responsible mitigation may be preferable if it would result in a better environmental outcome. To ensure a smooth permitting process for ongoing maintenance work, applicants are encouraged to either establish advance mitigation projects themselves or partner with other local agencies to do so, in consultation with the appropriate Regional Water Board. As mentioned by the commenter, the Procedures provide a certain amount of flexibility in locating an appropriate mitigation site. For instance, urban stream enhancements or removal of fish

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		barriers in the watershed could serve as mitigation for flood control projects.
2.9	Requiring mitigation for routine repairs of this sort of channels where the agency's intent is only to restore the channel's designated capacity and function often seems unnecessary and may not result in any meaningful ecological or water quality uplift.	See response to comment #2.1.
2.10	Page 5: Under item 'f' in the Project Application Submittal section includes a change in impacts assessment to a nearest one-thousandth of an acre (down from one tenth). This equates to approximately 43.6 square feet or a 6-ft by x 7-ft square- a very small area even for minor channel repair projects like what Zone 7 typically undertakes. This required level of precision seems unnecessary and possibly not realistic depending on the type of project.	The rounding of impact quantities in section IV.A.1.f has been revised. The quantity of impacts to waters proposed to receive a discharge of dredged or fill material at each location shall be rounded to at least the nearest one- hundredth (0.01) of an acre. This revision retains the allowance for applicants to round impacts to a smaller quantity (one-thousandth (0.001) of an acre) to more precisely characterize impacts related to dredge or fill activities. This impact measurement is necessary for determining fees, analyzing the level of threat and complexity, and determining the amount of required compensatory mitigation, if applicable.
2.11	Page 25: Timing: Timing the discharge to avoid the seasons when recreational activity etc. occurs may not be feasible. Project permits typically require maintenance work to be done in the dry months, which is often also the time when recreational use of channels may be the highest.	This comment was assumed to refer to Subpart H, Actions to Minimize Adverse Effects, of the State Supplemental Guidelines, specifically section 230.76, “Actions affecting human use.” This section states that minimization of adverse effects on human use may be achieved by “[t]iming the discharge to avoid the seasons or periods when human recreational activity associated with the aquatic site is most important.”

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		Timing is listed as one example of how to minimize adverse effects on human use and is not a mandatory requirement. The note to Subpart H makes it clear that the actions listed in Subpart H are examples of actions that may be taken, not an exhaustive list of required minimization actions.

Letter 3: Alameda County Flood Control & Water Conservation District

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3.1	Would this permit/order proposed procedures replace the existing 401 Water Quality Certification process?	The Procedures build and improve upon the existing 401 Water Quality Certification program. As stated in section 6.6 of the Staff Report, the Procedures will streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in Procedures sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal, thereby reducing the number of information requests and expediting the application review process.
3.2	District believes this proposed new permitting procedures and guidelines are far too excessive and burdensome on local government agencies such as flood control districts.	One goal of the Procedures is to reduce application processing time by clarifying the information needed for a complete application and the criteria for approval. Uniform statewide procedures allow for orders to be organized similarly and common application forms to be used, which should further expedite the application process for all applicants, including local agencies such as flood control districts.
3.3	The adoption of the existing federal definition of wetlands is commended.	The State Water Board is not proposing the adoption of the federal definition. See general response # 4.

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3.4	I[i]nclusion in the definition areas that may have been waters of the US but are no longer considered jurisdictional (Historic) (line 40); and results of human activity- anthropogenic (Line 41) is problematic. The procedures further removes exemptions (Line 48) listed in a water board water quality control plan. In effect, the exemption will not be honored.	To clarify, wetlands that are specifically identified in a water quality control plan as wetlands will be considered waters of the state. Previous drafts of the Procedures have not provided such an exemption. See also general response #2.
3.5	Additionally, it is not clear what constitutes "waters of the state" that is uniquely different from waters of the U.S. To leave the clarification to the permitting authority would result in arbitrary decision that would only lead to unnecessary delays and uncertainty.	The Clean Water Act covers only “waters of the United States,” a term which is defined by federal regulations. The precise definition of what constitutes waters of the United States has been in flux over the past few decades, but generally waters of the United States are waters with a relationship to navigable waters, including the territorial seas. In contrast, the scope of the Water Boards' jurisdiction is defined by the Porter-Cologne Water Quality Control Act, and does not include limitations based on navigability. In other words, the scope of the Water Boards' jurisdiction is broader than federal jurisdiction; waters of the United States are a subset of waters of the state.
3.6	"Recent Anthropogenic degradation of aquatic resources" should not be the basis of computing compensatory mitigation. Mitigation must be based solely on the project and associated construction impacts. Extending or attributing project impacts to "recent	Insertion of the referenced language in section IV.B.5.c of the Procedures was recommended by stakeholders during informal outreach. The ability to adjust the required mitigation ratio to account for recent intentional degradation of an aquatic resource that reduces the potential and existing

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	anthropogenic" activities that may have resulted several miles away in the watershed is rather inconsistent with E.O W-59-93 and contrary to the purpose and need of the project for which approval is sought. These anthropogenic degradations has no nexus to the project. Flood Control Districts should rather be credited for non-project related corrections or repairs of these identified anthropogenic degradations (or serve as a mitigation) instead of including this in the calculus of compensatory mitigation.	functions and conditions is appropriate. Otherwise there could be an incentive to intentionally degrade an aquatic resource in advance of a project so that less compensatory mitigation would be required. When recent anthropogenic degradation occurs wholly independent of the project applicant's activity, a higher mitigation ratio would likely not be appropriate. Corrections or repairs of identified anthropogenic degradations can be proposed as on-site compensatory mitigation for routine maintenance and repair projects.
3.7	The State Water Board should consider making funds available to address these anthropogenic degradations independently.	There is a variety of federal and state grant funding available, although limited, to restore waters that have been degraded by historic human activity such as mining, agriculture, forestry, etc. However, it is not appropriate to use public funds to compensate for any project-specific impacts.
3.8	The proposed new regulation would require preparation of extensive documentation: Section 404(b)(1) analysis including Least Environmentally Damaging Practical Alternative (LEDPA)(line 474); (Line 158-1670); Watershed Plan (Line 504); Watershed Profile (Line 512) in addition to the existing list of document that is submitted with Section 404/ 401 applications. This document review leading to permit (order) issuance would most likely result in delays given the current state of staffing at the water board. It is uncertain what the	See general response #6. See also Section 6.2, Project Need, of the staff report.

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	incremental environmental benefit would results beyond the existing permitting documentation.	
3.9	(Line 158-167) (326-332). It is not clear how this will work. Copies of Corps Section 404 permit application packages are provided to the Water board. Section 404 may not require alternative analysis. Therefore: • At what point would the water board require a supplement to section 401 certification without resulting in delay in issuing Section 401 certification? • Is this new procedures (order) a separate permit atop of the section 401 certification? • Would application of this new procedures/order apply to waters of the State only or to both waters of the US which for the most part same as the waters of the state?	Section IV.A.1.(h) has been revised to clarify that if an applicant submitted information to the Corps to support a draft alternatives analysis, the applicant shall provide a copy of that information to the Water Boards. See also general response #1. All items listed in sections IV.A.1 and IV.A.2 are required for an application to be considered complete; however, the Procedures would streamline the existing application process and it is not expected to result in any delays in processing outcomes. As defined in section V of the Procedures, Order means waste discharge requirements, waivers of waste discharge requirements, or water quality certification. Procedures apply to all waters of the state, including waters of the state that are outside of federal jurisdiction.
3.10	Case-by-case Determinations (Line 186). It is not clear how a case-by case determination would work. The proposed procedures give the Regional Board staff excessive discretionary authority to determine features under state waters. The proposed procedures have not fully articulated what constitutes waters of the state differently from the waters of	The revised Procedures provide a clear jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. The framework will also reduce the number of case-by-case determinations,

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	the US. This regulatory staff discretionary authority will lead to greater uncertainty in the regulated public on what features are covered that would trigger a violation of state waters. Interpretation thereof in the field becomes subjective and arbitrary. Waste Discharge Requirements will be uncertain and entirely arbitrary. This uncertainty will result in increased permitting costs and associated demand on Regional Board staff time during the application process.	further limiting the Water Boards' discretion and subjectivity. See also general response #11.
3.11	Aesthetics (Line 850- 856): This is beyond the water board's authority to require mitigation for aesthetics for maintenance projects that are generally exempt under CEQA.	Subpart B of Appendix A, § 230.10(c)(4) states that effects contributing to significant degradation considered individually or collectively, include "[s]ignificantly adverse effects of the discharge of pollutants on recreational, aesthetic, and economic values." It further states in § 230.10(d) that "[n]o discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps." Subpart H of Appendix A outlines actions which may be undertaken in order to minimize adverse effects of discharge of dredged or fill materials to waters of the state, one of which may be aesthetics (§ 230.76) (emph. added).

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		This is consistent with federal regulatory requirements. Even if a project does not have impacts that rises to the level of significant for the purposes of CEQA, it may nevertheless have impacts to waters of the state that could be avoided or minimized, and therefore identification of the LEDPA and is appropriate. In addition, there are numerous CEQA exemptions that are not based upon the assumption of nosignificant impact (e.g. Public Resource Code Section 21080.23. Pipeline Projects). Accordingly, an exemption from mitigation requirements for all CEQA exempt projects would not be appropriate.
3.12	This prescriptive discretionary authority appears to overlap other federal and state agencies jurisdictions. It is best if water board continue the existing coordination with federal and state agencies rather than taking on the role of demanding mitigation for project associated impacts outside their authority i.e.; waters of the state.	See general response #10. The Procedures do not authorize the Water Boards to require mitigation for project impacts outside of their jurisdiction.
3.13	Line 337 of the Procedures: Financial Assurances requirements: This demand would lock up limited resources indefinitely that otherwise could be available to local agencies for advancing environmental improvements in the watershed including compliance with other state mandates such i.e. NPDES/MRP. This assurance demand	A financial security is an optional requirement, and is not mandatory in all cases. Financial securities may be necessary to provide that there are sufficient funds to correct or replace unsuccessful mitigation if the responsible party fails to do so. A financial security may not be necessary where there is a high level of confidence that mitigation

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	erroneously assumes that Local Government agencies will cease to exist.	will be provided and maintained. For example, a letter of commitment may be an alternate mechanism to establish such confidence from a government agency.
3.14	The proposed procedures require consideration of existing climate change/ sea level and future conditions in developing maintenance projects. The compensatory mitigation requirements do not account for the significant investment required to meet site success criteria.	See general response #7 regarding the climate change analysis.
3.15	Line 788 of the Procedures: Adaptive management definition is inconsistent with changing climate/ Sea level rise. Project site conditions will change. Requiring mitigation to support the current site fauna and flora that may change is problematic. It will lead to increasing costs of continual intervention to meet permit/ order mitigation conditions that is based on existing conditions.	The Climate change analysis has been revised; see general response #7. It is unclear from this comment how the adaptive management definition is inconsistent with changing climate or sea level rises. The Supplemental Guidelines, Subpart J, section 230.92 defines adaptive management as "the development of a management strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of compensatory mitigation projects and guides modification of those projects to optimize performance. It includes the selection of appropriate measures that will

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		ensure that the aquatic resource functions are provided and involves analysis of monitoring results to identify potential problems of a compensatory mitigation project and the identification and implementation of measures to rectify those problems."
3.16	The permitting authority as proposed in the procedures has discretionary authority to request the type and location of mitigation proposed by the applicant. Recommend working with applicants to develop an appropriate mitigation that is commensurate to the impacts.	It is crucial for applicants to work closely with Water Board staff to develop appropriate compensatory mitigation for unavoidable impacts associated with a project. This is the reason that the Procedures require applicants to submit potential mitigation measures and draft mitigation plans as part of the initial application. These submittals provide the basis for a discussion about the amount, type, and location of mitigation needed for the project. A draft plan as part of the application ensures that the applicant begins mitigation planning in a timely manner so that the certification approval process may proceed efficiently, and also to ensure that the Water Boards participate early on in compensatory mitigation planning with the applicant and other interested agencies.
3.17	(Line 796): Buffer as required to protect aquatic resources may not be feasible in many urban environment where the adjacent are full developed. Such requirement is also inconsistent with the EO W-59-93 no-net-loss goal stating that it shall not be	The Procedures do not require buffers for all mitigation sites, because as the commenter states, buffers may not be feasible in all locations. However, because buffers serve to protect the habitat quality and water quality of a mitigation site,

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	based on permit-by permit.	section IV.B.5 of the Procedures includes buffers as one of a number of considerations for establishing the amount of mitigation required by the permitting authority. If the mitigation plan includes buffers around the mitigation site, the permitting authority may consider reducing the amount of compensatory mitigation required.

Letter 4: U.S. Army Corps of Engineers, South Pacific Division

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4.1	We'd like to reiterate/reemphasize the following comments from our August 2016 comment letter: 4, 6, 7(a)(1), 7(a)(4), 7(b), 7(c)(1) – (2), 7(d)(2) – (3), 7(e)(3), 7(e)(5), 7(e)(9), 7(e)(10), 7(e)(11), 7(e)(13)(a), 7(e)(13)(c), 7(e)(17), 7(e)(18), 7(e)(19), 7(f)(1)-(4), 7(g)(1), 7(g)(5), 7(g)(6), 7(g)(7), 7(g)(9), 7(g)(12). We respectfully request your continued review and resolution of these comments.	See response to comments numbered 4.1(a) through 4.1(z)(c).

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4.1(a)	**[2016 Comment 4]** Insofar as the State Water Board may have authority to issue individual or general permits for discharges of dredged or fill materials, applications for such permits should be separate and distinct from applications for permits or certifications which State Water Board issues under provisions of CWA. State regulations require a Water Board, upon receipt of an application, to determine if it is complete. "If the application is incomplete, the applicant shall be notified in writing no later than 30 days after receipt of the application of any additional information or action needed." 23 CCR § 3835(a). Further, "[a] request for certification shall be considered valid if and only if a complete application is received by the certifying agency." 23 CCR § 3835(d). A water quality certification under Section 401 of the CWA, 33 U.S.C. § 1341, is required before a Section 404 permit may be issued, but the requirement is deemed waived if the Water Board does not act within a reasonable time, and USACE regulations contains provisions for deeming certification waived. See 33 C.F.R. §§ 325.2(b)(1)(ii) and 336.1 (b)(8) . Unless applications for water quality certifications are separate and distinct from an application to discharge dredged or fill material, USACE will be uncertain as to how to apply sections 325.2(b)(1)(ii) and 336.1 (b)(8) when a Water Board finds an application to be incomplete. This subject is	State regulatory timeframes pertaining to the issuance of 401 certifications are established by the California Permit Streamlining Act (PSA), California Government Code § 65920 et seq., which was enacted in 1977. As has been the case since the Water Board established the state water quality certification program in 1990, the Water Boards and the Corps have successfully coordinated to meet applicable PSA requirements and federal timelines. The Water Boards expect to continue to work with the Corps to meet all relevant deadlines. The Procedures do not introduce any new requirements that would conflict with the PSA, or add elements that would extend certification timeframes, and therefore should not change existing informal coordination processes in place by the two agencies. As is the current practice, where necessary to comply with regulatory timeframes, where there is a project involving federal and non-federal waters of the state such that a 401 certification and a waste discharge requirement is required, the permitting authority may issue the 401 certification portion of the Order separately to comply with required deadlines. Consistent with current practice, the permitting authority will endeavor to issue the 401 certification and waste discharge requirement concurrently whenever possible.

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	discussed further below in the comments on Section IV of the proposed procedures.	
4.1(b)	**[2016 Comment 6]** Please note Federal agencies that invoke CWA section 404, 33 U.S.C. § 1344, are not required to select the least environmentally damaging practicable alternative and are not required to seek a CWA section 401 water quality certification.	Section 313 of the Clean Water Act states that federal agencies must comply with state laws in the same manner as any nongovernmental applicant, and section 404(t) similarly requires that federal agencies that engage in dredge or fill activities comply with state regulations to the same extent as any nongovernmental person. The Corps is required to obtain a CWA section 401 water quality certification for its projects. (33 C.F.R.§336.1(a)(1).) As such, the Water Boards will impose limitations in their certification necessary to assure compliance with any appropriate requirements of State law, which includes water quality control plans, for federal agencies' projects just as it would nongovernmental projects.

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4.1 (c)	**[2016 Comment 7(a)(1)]** USACE is concerned about the proposed Procedures' consistency with the USACE Regulatory Program and how it may impact the quality and timeliness of decision-making. To avoid conflicts and impacts on the regulated public, the proposed Procedures should be aligned with the USACE Regulatory Program to the maximum extent possible. Where alignment cannot be achieved, deference should be given to the USACE Regulatory Program requirements for activities resulting in the discharge of dredged and/or fill material into waters of the United States subject to section 404 of the CWA, especially with regards to aquatic resource delineations; restrictions on discharges, including determinations on the least environmentally damaging practicable alternative (LEDPA) under the EPA's Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (Section 404(b)(1) Guidelines); determinations of the appropriate amount and type of compensatory mitigation; and the approval of final mitigation and monitoring plans.	The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. Further, the Procedures encourage coordination with USACE on all the issues mentioned during the application stage of a project (as they routinely do with other agency staff) to ensure, when possible, that any mitigation and monitoring requirements overlap and to ensure regulatory consistency. However, the Clean Water Act expressly contemplates that state requirements may be more stringent than federal requirements. Specifically, section 401(d) provides that certifications shall set forth limitations necessary to assure compliance "with any other appropriate requirement of State law," which would include the Procedures. The Procedures would require an independent review of a proposed discharge of dredged or fill material to state waters, including waters that are also waters of the United States. Such an independent review is necessary to ensure state waters are protected in accordance with state law, which includes the Porter-Cologne Water Quality Control Act and the California Environmental Quality Act.

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4.1(d)	**[2016 Comment 7(a)(4)]** The proposed Procedures do not address applications for a Section 401 Water Quality Certification received from USACE for non-regulatory actions. This leaves unaddressed how the proposed Procedures apply to the USACE Civil Works Program, including USACE Operations and Maintenance (O&M) activities or projects (Civil Works Program). State staff, at the recent workshop held in Los Angeles, expressed the position that the proposed Procedures would apply equally to all applications. This status is untenable and not sustainable. Federal regulations (33 C.F.R. § 336.1 (b)(8)) clearly provide for a separate Section 401 Water Quality Certification process that is procedurally very different for USACE. Federal regulations governing the application for Section 401 Water Quality Certification for the USACE Regulatory Program can be found at 33 C.F.R. § 325.2(b)(1). USACE believes the proposed Procedures should acknowledge and clearly spell out the procedural difference. Issuing procedures that do not recognize these procedural differences will set USACE and the State up for conflict, reducing the chances for a cooperative consultation. USACE believes the proposed Procedures should include procedures applicable to Federal applicants.	The Procedures are equally applicable to federal applicants, including the USACE. The State Water Board disagrees that federal regulations require that a separate process be set forth for projects undertaken by the USACE. Generally, the Clean Water Act requires the USACE to seek state water quality certification for discharges of dredged or fill material to waters of the U.S. (33 C.F.R. § 336.1(a)(1).) Section 336.1(b)(8) describes generally applicable procedures for obtaining a 401 water quality certification, but none of the specified procedures are in conflict with the Procedures. The regulations state that the USACE is required to submit “information and data demonstrating compliance with state water quality standards,” and the Procedures set forth the information and data that is necessary. This subsection also sets forth a timeline for issuing a state water quality certification. As further explained in the response to Comment 4.1(a) above, the Procedures do not purport to extend any federally mandated timelines for certifications, and the Water Boards expect to continue to work with the USACE to meet all applicable deadlines.

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4.1(e)	**[2016 Comment 7(b)]** Section I: USACE recommends the State clarify alignment with the USACE Regulatory Program and defer to the decisions made by the USACE related to discharges of dredged and/or fill material into waters of the United States subject to section 404 of the CWA, as described in comment 7(a)(1) above.	See response to comment #4.1(c) (above).
4.1(f)	**[2016 Comment 7(c)(1)]** For consistency and to avoid unnecessary delays in permit evaluation, USACE recommends the State adopt the definition of wetlands utilized by USACE, as follows: those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 C.F.R. § 328.3(c)(4))	See general response #4.

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4.1(g)	**[2016 Comment 7(c)(2)]** This section states that Water Boards may consider a wetland to be a water of the state on a case-by-case basis. It is unclear what the state intends to do consider as part of this evaluation.	The revised Procedures provide a clear jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. The framework will also reduce the number of case-by-case determinations, further limiting the Water Boards' discretion and subjectivity.
4.1(h)	**[2016 Comment 7(d)(2)]** The State intends to have applicants use the USACE's 1987 wetland delineation manual and two regional supplements, but utilizing different methodology for the vegetation criterion, for identifying and delineating wetlands per the State's proposed definition. The USACE recommends the State prepare a supplemental study or analysis to ensure that the USACE methodology, as modified by the State, can be used to make valid determinations about wetland boundaries under the State's proposed wetland definition. However, as noted above, USACE recommends that the State adopt the Federal definition of wetland.	The delineation methods do not require a different methodology for the vegetation criterion, except in cases where vegetation is absent. In this case, section III of the Procedures clarifies that "[t]he methods shall be modified only to allow for the fact that the lack of vegetation does not preclude the determination of such an area that meets the definition of wetland." The Water Boards may undertake to develop state-specific delineation guidelines in the future, but in order to avoid further delay in adoption of the Procedures, any such efforts would be conducted separately. Regarding the federal definition of wetland, see general response #4.
4.1(i)	**[2016 Comment 7(d)(3)]** This section of the proposed Procedures solely addresses the delineation of wetlands, and does not provide information for the delineation of other waters of	Definitions and delineation procedures of features, such as streams, have not been addressed in the Procedures because it is outside of the scope of the project and would add significant delays for

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	the State. USACE recommends the State clarify how other waters of the State would be delineated/determined. USACE recommends the State adopt the methodology utilized by USACE for determinations of ordinary high water mark (OWHM) (33 C.F.R. § 328.3(c)(6)), mean high water (MHW) (33 C.F.R. § 329.12), and high tide line (HTL) (33 C.F.R. § 328.3(c)(7)). In addition, in August 2008, the USACE Engineer Research and Development Center/Cold Regions Research and Engineering Laboratory (ERDC/CRREL) published A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States, and in August 2014, ERDC/CRREL published A Guide to Ordinary High Water Mark (OHWM) Delineation for Non-Perennial Streams in the Western Mountains, Valleys, and Coast Region of the United States, which USACE recommends be utilized for the determination of OHWM.	adoption of the Procedures. See also general response #11.
4.1(j)	**[2016 Comment 7(e)(3)]** Lines 84-85: The section states it applies to all applications for discharges of dredged or fill material into waters of the State. It appears the SWRCB is attempting to require CWA section 401 water quality certifications for all waters of the State, even in non- Federal waters. Congress limited water quality certifications for discharges to waters of the United States. See 33 U.S.C.	The discharge of dredge or fill materials to non-federal waters of the state does not require a 401 certification. Such discharges would, however, need to obtain waste discharge requirements. One of the purposes of the Procedures is to make the requirements under 401 certifications and waste discharge requirements as similar as possible. Aiming to provide consistency across the

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	§ 1341(a). Further, state regulations at 23 CCR § 3831 (u) state, 'water quality certification means a certification that any discharge or discharges to waters of the United States, resulting from an activity that requires a federal license or permit, will comply with water quality standards and other appropriate requirements.' Thus, any requirement to seek and obtain water quality certification for discharges to non-Federal waters is beyond the State's authority.	programs is not, however, the same as requiring dischargers who discharge to non-federal waters of the state to obtain 401 certifications.
4.1(k)	**[2016 Comment 7(e)(5)]** Section IV(A)(1): It appears as though an application for a CWA section 401 water quality certification will not be considered 'complete' unless information related to waters of the State is submitted. Because a CWA section 401 water quality certification is required only for an activity that may result in a discharge of a pollutant into waters of the United States, the State lacks authority to require such information and to delay processing of an application for CWA section 401 water quality certification pending information related to the discharge of dredged and/or fill material into waters of the State, that are not waters of the United States.	As explained in more detail in response to comment 4.1(a), the Procedures will not extend any applicable time limitations in processing 401 certifications or WDRs. For efficiency, the Water Boards generally process applications that affect both federal and non-federal waters of the state at the same time. In most cases, the materials submitted regarding the federal and non- federal waters will be the same, and therefore have the same completeness determination. CEQA requires the permitting authority to consider the impacts associated with “the whole of the project.” If only the application for the 401 certification is complete, the Water Boards may separately process the application for discharges to federal and non-federal waters if compliant with CEQA, but it is expected that the applicant and the permitting authority would strive to avoid such a bifurcation whenever possible.

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4.1(l)	**[2016 Comment 7(e)(9)]** Section IV (A)(2)(c): In addition to the CWA statutory exemptions under Section 404(f), 33 U.S.C. § 1344(f), USACE regulations at 33 C.F.R. §323.2(d)(3) describes activities that do not require a USACE 404 permit. This provision should recognize such exclusions along with the statutory exemptions.	The Procedures have been revised to include a definition of “discharge of dredged material” consistent with the definition set forth in 33 C.F.R. § 323.2(d).
4.1(m)	**[2016 Comment 7(e)(10)]** Section IV (A)(2)(d): This requirement appears to relate only to USACE Regulatory program-related permittee-responsible compensatory mitigation. Per USACE and EPA regulations at 33 C.F.R. § 332.3(b) and 40 C.F.R. § 230.93(b), mitigation banks and in-lieu fee programs are generally preferred over permittee responsible compensatory mitigation. USACE recommends that the State adopt the same preference hierarchy. In addition, the State should defer to the decisions by USACE on required compensatory mitigation for discharges of dredge and/or fill material into waters	Revisions have been made to section IV.A.2.b (formerly IV.A.2.d in the 2016 draft Procedures, and IV.A.2.c in the 2016 draft Procedures) of the Procedures to clarify what must be submitted when an applicant intends to fulfill its compensatory mitigation obligations by securing credits from a mitigation bank or in-lieu fee program. Section IV.A.2.b also states that a draft compensatory mitigation plan "shall comport with the State Supplemental Dredge or Fill Guidelines, Subpart J" which includes the soft preference hierarchy for compensatory mitigation approaches.

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	of the United States subject to section 404 of the CWA. To the extent the State intends a broader application the USACE permit actions, the State needs to recognize that for the Civil Works Program, the USACE determines and approves the final compensatory mitigation plan, not the State. However, the USACE welcomes the permitting authority's suggested edits and comments on the USACE's compensatory mitigation plan. The State must recognize that the USACE is unable to adhere to this section of the proposed Procedures because we must comply with the requirements of section 2036(a) of the Water Resources Development Act of 2007 and associated USACE Headquarters guidance in developing compensatory mitigation plans determining the amount, nature, type and location of compensatory mitigation.	Section IV.B.5 of the Procedures states that, where feasible, the permitting authority shall consult and coordinate with other public agencies regarding compensatory mitigation in order to achieve multiple environmental benefits with a single mitigation project. As such, the permitting authority will coordinate with the Corps whenever possible in developing compensatory mitigation requirements. However, because the Water Boards and the Corps have different statutory authorizations and different jurisdictions, it would not be appropriate to defer to the Corps regarding compensatory mitigation for discharges of dredged or fill material to waters of the U.S. in all cases. Instead, as is consistent with current practices, the permitting authority will continue to develop appropriate compensatory mitigation requirements based on the particular circumstances of the proposed project; the permitting authority is not bound by the Corps' compensation mitigation determinations. As for setting appropriate compensatory mitigation requirements for the Civil Works Program, it is expected that the permitting authority will give consideration to any relevant regulations or other constraints that the Corps identifies as applicable to a particular project.

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4.1(n)	**[2016 Comment 7(e)(11)]** Section IV (A)(2)(d)(iii): USACE recommends the State define 'preliminary information,' as it is unclear what is meant by this statement.	This term is used colloquially to mean information developed prior to the final information, so it is not necessary to define.
4.1(o)	**[2016 Comment 7(e)(13)(a)]** To mirror the Federal "no net loss" policy, rather than limiting the scope of the "no net loss" to a watershed, it is more appropriate to apply the State "no net loss" policy to the State of California.	Executive Order W-59-93, signed August 23, 1993, is applicable to the State of California as a whole. However, the watershed approach outlined in the Procedures closely aligns with the Corps' watershed approach. As described in section 6.1 of the Staff Report, one of the objectives of the Procedures is to "Support the Water Boards' environmental priorities for protecting and enhancing California's vital wetland areas through *watershed-based* regulatory and monitoring strategies," (emphasis added). Section 5.1 of the Staff Report also states that a watershed-level approach is most effective in protecting wetlands and riparian areas and their associated water quality functions. Therefore, the Water Boards' aim to sustain and enhance the quality and quantity of aquatic resources is more effective on a watershed-by-watershed scale than on a state scale. Nonetheless, achievement of "no net loss" should be analyzed holistically, giving consideration to quantity, quality, and permanence, and taking into account a statewide and long-term perspective. Overall, the Procedures should help "ensure

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		there will be a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values . . . ” in accordance with Executive Order W-59-93.
4.1(p)	**[2016 Comment 7(e)(13)(c)]** Please note that in the USACE Regulatory Program, applicants do not prepare an alternatives analysis, but provide alternatives information to support the alternatives analysis prepared by the USACE when making a permit decision under section 404 of the CWA. Please also be aware that the USACE's Regulatory Program Section 404(b)(1) Guidelines alternatives analysis is included in the environmental document prepared for the standard permit and, if applicable, letter of permission. An alternatives analysis is conducted by the USACE Regulatory Program at the time the general permit is created in accordance with the Section 404(b)(1) Guidelines. Subsequent alternatives analyses are not conducted by the USACE to verify the applicability of a general permit. A similar approach is also proposed by the State in its Appendix A, subpart A, which appears to be inconsistent with the approach in this section. For the Civil Works Program which result in a discharge of dredged or fill material, the USACE's Section 404(b)(1) Guidelines alternatives analysis is	The Procedures have been revised to reflect that if an applicant submitted information to the Corps to support an alternative analysis, the applicant shall submit the same information to the permitting authority.

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	included in the environmental document prepared for the project.	
4.1(q)	**[2016 Comment 7(e)(17)]** Section IV (B)(4): For the Civil Works Program, the USACE determines and approves the final restoration plan, not the State. However, the USACE welcomes the permitting authority's suggested edits and comments on the USACE's restoration plan. For USACE Regulatory permit actions, the permitting authority's review and approval should be limited to the State's authority under CWA section 401.	Section 313 of the Clean Water Act states that federal agencies must comply with state laws in the same manner as any nongovernmental applicant, and section 404(t) similarly requires that federal agencies that engage in dredge or fill activities comply with state regulations to the same extent as any nongovernmental person. The State Water Board has broad authority under the Porter-Cologne Water Quality Control Act to adopt water quality control plans that address factors affecting water quality, including the discharge of dredged or fill material. A water quality control plan has the same force and effect as a state regulation. Per section 401(d) of the Clean Water Act, the Water Boards may set for limitations in their certification necessary to assure compliance with any appropriate requirements of State law, which includes water quality control plans. As such, the Water Boards are obliged to ensure state waters are protected in accordance with state law, which includes the Porter-Cologne Water Quality Control Act and CEQA. The Water Boards expect that they can collaborate with the Corps to develop a final mitigation plan. Implementing the Procedures is within the State's authority under Clean Water Act section 401. Pursuant to the Clean Water Act, section 401(d),

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		the Water Boards' water quality certifications set forth limitations necessary to assure compliance with various provisions of the Clean Water Act "and with any other appropriate requirement of State law set forth in the certification." The Procedures will be included in a state policy for water quality control, the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. As part of a water quality control plan, the Procedures will have the same force and effect as a regulation, and accordingly it is appropriate to include limitations necessary to assure compliance with the Procedures in water quality certifications.
4.1(r)	**[2016 Comment 7(e)(18)]** Section IV (B)(5): USACE recommends the State defer to compensatory mitigation requirements determined by USACE for all discharges of dredged or fill material into waters of the United States subject to section 404 of the CWA. For the Civil Works Program, the USACE determines and approves the final compensatory mitigation plan, not the State. However, the USACE welcomes the permitting authority's suggested edits and comments on the USACE's compensatory mitigation plan. The State must recognize that the USACE is unable to adhere to this section of the proposed Procedures because we must comply with the requirements of section	Section IV.B.5 of the Procedures states that, where feasible, the permitting authority shall consult and coordinate with other public agencies regarding compensatory mitigation in order to achieve multiple environmental benefits with a single mitigation project. As such, the permitting authority will coordinate with the Corps whenever possible in developing compensatory mitigation requirements. However, because the Water Boards and the Corps have different statutory authorizations and different jurisdictions, it would not be appropriate to defer to the Corps regarding compensatory mitigation for discharges of dredged or fill material to waters of the U.S. in all cases. Instead, as is consistent

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	2036(a) of the Water Resources Development Act of 2007 and associated USACE	with current practices, the permitting authority will continue to develop appropriate compensatory mitigation requirements based on the particular circumstances of the proposed project; the permitting authority is not bound by the Corps' compensation mitigation determinations. As for setting appropriate compensatory mitigation requirements for the Civil Works Program, it is expected that the permitting authority will give consideration to any relevant regulations or other constraints that the Corps identifies as applicable to a particular project. As explained by section IV.B.5.f, financial securities are required only when deemed necessary by the permitting authority. As further explained by Appendix A, Subpart J, section 230.93(n)(2), financial assurances may be provided in a variety of forms, including legislative appropriations. Where the applicant is a federal agency, a financial security may not be necessary.
4.1(s)	**[2016 Comment 7(e)(19)]** Section IV (D)(1)(a): The proposed guidelines do not identify who will determine whether a proposed activity is exempt from authorization under section 404(f)of the CWA (33 U.S.C. § 1344(f)). This is a determination that is made by USACE for discharges of dredged and/or fill material into waters of the United States under section 404 of the CWA and the State must defer	The Water Boards will defer to the Corps regarding determinations that activities are exempt under section 404(f) for discharges of dredged or fill material into waters of the United States. To determine the scope of section 404(f) exemptions, the Water Boards may use materials that the Corps relies upon, such as applicable regulatory guidance letters.

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	to USACE. In addition, USACE recommends the State delete all references to the USACE Regulatory Guidance Letters. These documents are guidance to the field, are contextual in nature, may not be entirely relevant or applicable, and can change over time. USACE recommends that the State identify USACE will make the determination in accordance with section 404(f) of the CWA, USACE and EPA regulations, and any applicable USACE policies and guidance. Lastly, this subsection should include the exclusions from the need to get a section 404 permit provided by USACE regulations at 33 C.F.R. § 323.2(d)(3).	The Procedures have been revised to include a definition of "discharge of dredged material" consistent with the definition set forth in 33 C.F.R. § 323.2.
4.1(t)	**[2016 Comment 7(f)(1)]** Delineation: USACE recommends the State modify the definition to include all aquatic resources including wetlands, other special aquatic sites, and other waters, including, but not limited to, rivers, streams, and lakes.	The Procedures include a definition for "Wetland Delineation," which clarifies that the definition is applicable to only wetland delineations, the process for which is set forth in section III. Definitions and delineation procedures of features, such as streams, have not been addressed in the Procedures because it is outside of the scope of the project and would add significant delays for adoption of the Procedures.

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4.1(u)	**[2016 Comment 7(f)(2)]** Discharge of dredged material: USACE recommends the State utilize the definition for discharge of dredged material found in 33 C.F.R. § 323.2(d), in its entirety.	The Procedures have been revised to include a definition of "discharge of dredged material" consistent with the definition set forth in 33 C.F.R. § 323.2(d).
4.1(v)	**[2016 Comment 7(f)(3)]** Discharge of fill material: USACE recommends the State utilize the definition for discharge of fill material found in 33 C.F.R. § 323.2(e), in its entirety.	The Procedures have been revised to include a definition of "discharge of fill material" consistent with the definition set forth in 33 C.F.R. § 323.2(e).
4.1(w)	**[2016 Comment 7(f)(4)]** Ecological Restoration and Enhancement Projects: The definition utilized indicates that only those activities undertaken in accordance with an agreement with federal or state resource agencies or non-governmental conservation organizations are considered to be ecological restoration and enhancement projects (Lines 400-446). Please note that this definition is not consistent with USACE experience with these activities, as aquatic habitat restoration, establishment, and enhancement activities frequently occur without such agreements. In addition, the definition should include ecosystem restoration projects proposed by the USACE.	The Procedures have been revised to reflect that Ecological Restoration and Enhancement Projects include those restoration and enhancement projects undertaken by a state or federal agency. The EREP definition restricts other proposed projects to those with binding agreements with agencies. Because additional agency review and oversight is provided through the agreements, a number of application requirements are limited in the Procedures for EREPs to avoid regulatory redundancy and associated cost. Projects not meeting the EREP definition will be subject to the standard application requirements.

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4.1(x)	**[2016 Comment 7(g)(1)]** USACE recommends the State defer to USACE in all applications of the Section 404(b)(1) Guidelines for discharges of dredged and/or fill material into waters of the United States subject to section 404 of the CWA, and recommends the State identify that the proposed guidelines in Appendix A apply solely to discharges of dredged and/or fill material into non-Federal waters.	As stated in the Staff Report, two primary objectives of the Procedures are to "establish a uniform regulatory approach consistent with the federal CWA section 404 program" and "strengthen regulatory effectiveness." (Section 6.1 Project Objectives.) The State Water Board developed the Procedures, therefore, not to exclusively rely on the Corps' regulatory actions, but instead to develop a more effective regulatory program pursuant to its authorities under the Water Code. Even so, the State Board recognizes in the Procedures the need for general deference to the Corps for wetland jurisdictional determinations and evaluations of project alternatives for projects that impact waters of the United States. In so doing, the Water Boards seek to avoid the case where these requirements are applied differently by the Water Boards and the Corps, adding to costly project delays.

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4.1(y)	**[2016 Comment 7(g)(5)]** Section 230.6: This section refers to the permitting authority making findings of compliance, however, it's unclear what specific findings the permitting authority is to make. In addition, this section indicates that extensive testing is generally not intended or expected for routine cases. However, the State has proposed elimination of Subpart G of the Section 404(b)(1) Guidelines for determining when testing is necessary. Therefore, it is not clear how a determination regarding testing would be made by the State, and any associated testing requirements to make such a determination.	Finding of compliance with the Guidelines will be based on the requirements in Subpart B. The need for testing of dredged or fill material will be evaluated by the permitting authority based on available information about the impacted waterbody, including applicable contaminant research, TMDLs, chemical and biological reports, CEQA analysis, and the composition of the dredged or fill material itself.
4.1(z)	**[2016 Comment 7(g)(6)]** Section 230.10 (a)(1)(i) and (ii): These sections mention ocean waters separate from waters of the State. The proposed Procedures, however, do not define or distinguish ocean waters from waters of the State. Under the CWA, navigable waters means the waters of the United States, including the territorial seas. 33 U.S.G. § 1362(7). The term "ocean" means any portion of the high seas beyond the contiguous zone. 33 U.S.G. § 1362(1 0). It is the USACE's understanding and belief that waters under State jurisdiction does not extend beyond the limit of the territorial seas. That being the case, it is unclear why the State retained the reference to ocean waters in Appendix A.	The reference to "ocean waters" as cited in this comment was retained to be consistent with 404(b)(1) Guideline language; however, ocean waters are waters of the state. Ocean waters, as defined in the Water Quality Control Plan for Enclosed Bays and Estuaries, are territorial marine waters of the state as defined by California law to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. Discharges to ocean waters are regulated in accordance with the State Water Board's California Ocean Plan.

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4.1(z)(a)	**[2016 Comment 7(g)(7)]** Section 230.10 (c): Appendix A retains the requirement of 40 C.F.R. § 230.10(c) of the EPA's Section 404(b)(1) Guidelines related to significant degradation. However, the determination of significant degradation made by USACE under section 404 of the CWA is based upon the factual determinations, evaluations, and tests identified in EPA's Section 404(b)(1) Guidelines. The State has proposed elimination of these methods for determining significant degradation. Therefore, it is not clear how a determination of significant degradation would be made by the State. See comment 7(g)(1) above related to deference to USACE in the application of the Section 404(b)(1) Guidelines for activities subject to section 404 of the CWA.	Findings of significant degradation related to a proposed discharge of dredged or fill material will be based on State Supplemental Guidelines Subpart B (Compliance with the Guidelines), section 230.10(c), which lists the environmental effects to be considered. These effects are the same as listed in the federal Guidelines without alteration. The State Supplemental Guidelines did not retain the entirety of subparts C through F, and accordingly omitted the references to those subparts in section 230.10(c). Per the State Supplemental Guidelines, the permitting authority is not required to make factual determinations in writing with the specificity that is required by the federal guidelines. Instead, the permitting authority is not limited in what information it may use to determine whether a discharge of dredged or fill material will cause or contribute to significant degradation of waters of the state. The list of illustrative examples set forth in subparts C through F may be informative for the analysis for any given project, but the permitting authority is not required to evaluate the specific considerations outlined in subparts C through F, and the permitting authority may also consider other factors, such as issues raised during the CEQA analysis. Likewise, the State Supplemental Guidelines do not include Subpart G, which relates to evaluation and testing methods. Instead, the need for testing of

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		dredged or fill material will be evaluated by the permitting authority based on available information about the impacted waterbody, including applicable contaminant research, TMDLS, chemical and biological reports, CEQA analysis, and the composition of the dredged or fill material itself.
4.1(z)(b)	**[2016 Comment 7(g)(9)]** Section 230.92, Watershed approach: USACE recommends the State retain the existing definition of watershed approach as defined in USACE regulations at 33 C.F.R. § 332.2, and the Section 404(b)(1) Guidelines at 40 G.F.R. § 230.92	The definition of a watershed approach, as defined in section V of the Procedures, was modified slightly from the definition provided for in the 404(b)(1) Guidelines to emphasize an analytical focus on the abundance, diversity and condition of aquatic resources in the watershed; however, the same general concepts apply.
4.1(z)(c)	**[2016 Comment 7(g)(12)]** Section 230.93: The State needs to recognize for the Civil Works program and O&M activities performed by the USACE, the USACE approves the final compensatory mitigation plan, not the State. However, the USACE welcomes the permitting authority's suggested edits and comments on the USACE's compensatory mitigation plan. The State must recognize that the USACE is unable to adhere to this section of Appendix A of the proposed Procedures because we must comply with the requirements of section 2036(a) of the Water Resources Development Act of 2007 and associated USACE Headquarters guidance in developing	Section IV.B.4 of the Procedures states that, where feasible, the permitting authority shall consult and coordinate with other public agencies regarding compensatory mitigation in order to achieve multiple environmental benefits with a single mitigation project. As such, the permitting authority will coordinate with the Corps whenever possible in developing compensatory mitigation requirements. However, because the Water Boards and the Corps have different statutory authorizations and different jurisdictions, it would not be appropriate to defer to the Corps regarding compensatory mitigation for discharges of dredged or fill

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	compensatory mitigation plans and the amount, nature, type and location of compensatory mitigation. In addition, for the Civil Works program and O&M activities of the USACE, the USACE is not able to provide any financial security to the State or commit to long-term management funding.	material to waters of the U.S. in all cases. Instead, as is consistent with current practices, the permitting authority will continue to develop appropriate compensatory mitigation requirements based on the particular circumstances of the proposed project; the permitting authority is not bound by the Corps' compensation mitigation determinations. As for setting appropriate compensatory mitigation requirements for the Civil Works Program, it is expected that the permitting authority will give consideration to any relevant regulations or other constraints that the Corps identifies as applicable to a particular project. As explained in section IV.B.5.f financial securities are required only when deemed necessary by the permitting authority. As further explained in Appendix A, Subpart J, section 230.93(n)(2), financial assurances may be provided in a variety of forms, including legislative appropriations. Where the applicant is a federal agency, a financial security may not be necessary.
4.2	After issuance of our August 2016 comment letter, USACE Headquarters published Regulatory Guidance Letter (RGL) 16-01 in October of 2016. (See attached) RGL 16-01 at paragraph 5 provides that USACE generally does not issue an approved or preliminary jurisdictional determination (JD) where an applicant has not requested	The Procedures were revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2), including reports verified per Corps RGL 16-01.

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	a JD. Additionally, RGL 16-01 at paragraph 5 noted that under certain circumstances, a JD is not required. However, USACE would require an aquatic resources delineation, conducted in accordance with regulation, policy, and guidance, clearly depicting the location and amount of aquatic resources within a review area. We recommend the State update Sections VI(A)(1)(b), IV(A)(1)(d), and other applicable sections, to allow for the submittal of a Final aquatic resources delineation verified by USACE, without a requirement for an approved or preliminary JD from USACE.	
4.3	While it is our understanding the State does not intend for the Proposed Dredge/Fill Procedures to affect the time for completing the USACE permit review process, we believe this intent is not clearly captured in the Proposed Dredge/Fill Procedures. For example, the additional requirements imposed by the Dredge/Fill Procedures, lack of complete deference to USACE with regards to waters of the U.S., and failure to identify clear timelines, has the potential to adversely impact operations of the USACE Regulatory and Civil Works Programs (see more detailed comments in "Section B" below). The USACE permit review process must not be impacted by the State's Proposed Dredge/Fill procedures. Please note USACE will not agree to additional coordination and requirements that extend our permit review process. We recommend	As explained in more detail in response to comment 4.1(a), the Procedures will not extend any applicable time limitations in processing 401 certifications or WDRs. For efficiency, the Water Boards generally process applications that affect both federal and non-federal waters of the state at the same time. Applicants should keep Water Board staff informed of all scheduled agency reviews and pre-application site visits so that staff may participate and provide applicants with any information that may assist in preventing delays later. For example, applicants should notify the Water Boards if the Corps is reviewing their project during the Corps' regularly scheduled "pre-application" meetings, which may be attended by Water Board staff. Pre-application meetings or informal consultation with the Water Boards benefit the applicant by providing useful

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	the State provide timelines in the Proposed Dredge/Fill Procedures for when State or Regional Board staff should typically begin to be involved in the USACE permit review process and a time when USACE may assume State or Regional Board staff do not have concerns regarding a proposed activity, with the understanding that there may be rare instances where an activity may violate State water quality standards based on information that was not known earlier in the process.	information which could prevent delays during application review. For complex projects, this should be done ideally during the early planning stage of the project. As to agency coordination, the Water Boards are committed to increasing interagency coordination in order to streamline application review for all parties involved and expect to try and reach agreements with other agencies that facilitate coordination.

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4.4	We recommend the State be consistent with the use of “dredge” or “dredged” throughout the Proposed Dredge/Fill Procedures.	In some cases the use of dredge is appropriate and in other cases the use of dredged is appropriate; the Procedures have been clarified to reflect this.
4.5	We recommend the State be clear on the purpose of the Proposed Dredge/Fill Procedures, including the reason for the proposal, the anticipated benefits to the public, and whether they will result in greater consistency among the Regional Boards.	A detailed description of the Procedures is provided in section 6 of the Staff Report. This description outlines objectives and need as well as anticipated benefits to the public. In addition, section 6.6 of the Staff Report describes how the Procedures would streamline the Water Boards’ existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process.

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4.6	We recommend the State explain the origin of the Proposed Dredge/Fill Procedures and rationale for expanding from isolated waters to all waters of the state, within a Background Paragraph.	The Staff Report explains the need for the Procedures in the Project Need section. The Procedures have many objectives, one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. In addition, the proposed Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state and to prevent further losses in the quantity and quality of wetlands in California. The Project Need section of the Staff Report also gives more detail regarding State Water Board Resolution 2008-0026, which directed the State Water Board to "take action to ensure the protection of the vital beneficial services provided by wetlands and riparian areas through the development of a statewide policy (Policy) to protect wetlands and riparian areas that is watershed-based." Phase 1 was to establish a Policy to protect wetlands from dredge and fill activities. The Policy, now known as the Procedures, was directed to include a wetland definition and a wetland regulatory process that includes a watershed focus.
4.7	We continue to have concerns regarding the definition of "wetlands" in the Proposed Dredge/Fill Procedures, and believe the State should use the USACE definition of "wetlands". Two different definitions of "wetlands" has a potential to result	See general response #4.

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	in an increased burden on applicants to produce multiple aquatic resource delineations, increased inconsistency between the USACE Regulatory Program and State procedures, and conflicting federal and state decisions. When verifying aquatic resources, USACE will only verify the location and extent of those features that meet the USACE definition of wetland, or are an “other” type of aquatic resource containing a mean high water mark, high tide line, or ordinary high water mark. Those features that do not meet the USACE definition of wetland or do not have an ordinary high water mark, would not be identified by USACE as an aquatic resource in a verified aquatic resources delineation. In addition, the Section 404(b)(1) Guidelines provide additional criteria for activities resulting in a discharge of dredged and/or fill material into special aquatic sites, including wetlands. With the different definition of wetlands, there are instances where an aquatic resource could be identified as a wetland by the State (and therefore a special aquatic site), but be identified as a nonwetland aquatic resource by USACE (and therefore not a special aquatic site). In these cases, USACE and the Regional Board may not be able to utilize the same Alternatives Information report prepared by the applicant, resulting in additional time and cost to the applicant.	

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4.8	"Artificial wetlands" are often difficult to identify and delineate, especially as it relates to agricultural land. In the experience of USACE, many sites with wetlands that appear to be "artificial" actually consist of natural wetlands that have been supplemented by irrigation or other human-created sources of water. For example, irrigated rice fields are often located in floodplains that historically supported wetlands. In delineating wetlands in these areas under the Federal definition, USACE often finds that the natural wetlands are generally substantially less than the entire rice field. Under the proposed definition, the entirety of the rice field could be considered a water of the state if it is determined the rice field meets the requirements of 4(c). The USACE procedures on wetland determination and delineation procedures for irrigated lands should be considered (see http://www.spd.usace.army.mil/Portals/13/docs/regulat ory/qmsref/Irrigated/Irrigated.pdf). In addition, we recommend the State review the preamble to the USACE 1986 regulations (51 Fed. Reg. 41,206, 41,217 (1986)), for features that are "generally" not considered to be waters of the U.S., and incorporate these features into the Proposed Dredge/Fill Procedures, to the extent applicable.	The USACE procedural document referenced in this comment is a guide and is not intended to address the jurisdictional status of any such wetlands, issues relative to permitting discharges of dredged or fill material in jurisdictional wetlands, or mitigating impacts to jurisdictional wetlands. Because hydrology in California has been extensively altered and the distinction between natural and artificial is not always clear, the Procedures set forth a number of categories in the jurisdictional framework, not all of which are dependent a determination of whether a wetland is natural or artificial. For example, where a natural wetland has been supplemented by irrigation or otherwise modified, it is likely that it would be considered a wetland created by modification of a water of the state pursuant to section II, footnote 2. It is not necessary to label the wetland either natural or artificial. The phrase in section II.3.c regarding artificial features that "resulted from historic human activity and are a relatively permanent part of the natural landscape" was revised to provide greater clarity that it would not include wetlands that are subject to ongoing

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		maintenance. See general response #2. In addition, the Procedures have been revised to add a procedural exclusion for rice and certain agricultural features similar to the 1986 preamble and Clean Water Rule. In addition, section IV.D of the Procedures identifies areas and activities that are excluded from complying with the application submittal and review requirements set forth in section IV.A and B. This includes agriculture- related activities exempt under Clean Water Act section 404(f). However, these areas and activities are not exempt as waters of the state and could be regulated under another program such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures.
4.9	In addition to preliminary and approved JDs, the State should rely upon all “aquatic resource delineation verifications,” completed by USACE (see Comment A(2)).	The Procedures were revised to indicate that the permitting authority will rely on delineations from final aquatic resource reports verified by the Corps, without requiring that the delineation be accompanied by a preliminary or approved jurisdictional determination because per RGL 16-01, under certain circumstances, a jurisdictional determination is not required.

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4.10	We recommend the State align with the Federal Wetlands Delineation manual and Regional Supplements as it relates to vegetative cover (see Comment B(2)(a)).	See general response #4.
4.11	We continue to have concerns that the State's incorporation and modification of certain "relevant portions" of the Section 404(b)(1) Guidelines has the potential to produce different and potentially conflicting decisions between the Regional Boards and USACE, as well as adversely affect timelines for USACE permit decisions.	Comment noted. As stated in the Staff Report, two primary objectives of the Procedures are to "establish a uniform regulatory approach consistent with the federal CWA section 404 program" and "strengthen regulatory effectiveness."(Section 6.1 Project Objectives.) Appendix A of the Procedures was included to align state practices with federal practices, to the extent practicable. Due to jurisdictional and procedural differences, some modifications were necessary. In creating the State Supplemental Dredge or Fill Guidelines, the approach used was generally to limit changes to: (1) omissions of portions of the guidelines that a. provided illustrative examples or other non- binding descriptions; or b. did not reflect state practice or conflicted with state law; or c. were redundant with the Procedures; and (2) global changes to change federal terms to the state equivalent. By adopting relevant portions of the 404(b)(1) Guidelines, the Water Boards seek to avoid the case where these requirements are applied differently by the Water Boards and the Corps, adding to costly project delays or significantly impacting Corps permit

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		decisions. Also see response to comment #4.1(a).
4.12	We recommend additional emphasis is added to encourage applicants to engage the Regional Board prior to submitting an application for water quality certification. In its Regulatory Programs, USACE has found such “pre-application meetings” to be extremely beneficial to both the applicant, USACE, and other agencies, and generally have the effect of reducing the application review time.	Language in the Procedures has previously been revised to clarify that applicants may consult with the Water Boards early in the application process. Pre-application meetings or informal consultation with the Water Boards benefit the applicant by providing useful information which could prevent delays during application review. For complex projects, this should be done ideally during the early planning stage of the project. As to agency coordination, the Water Boards are committed to increasing interagency coordination in order to streamline application review for all parties involved and expect to try and reach agreements with other agencies that facilitate coordination. Applicants should keep Water Board staff informed of all scheduled agency reviews and pre-application site visits so that staff may participate and provide applicants with any information that may assist in preventing delays later. For example, applicants should notify the Water Boards if the Corps is reviewing their project during the Corps’ regularly scheduled “pre-application” meetings, which may be attended by Water Board staff.

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4.13	The State's reliance on Clean Water Action Section 313 in their response to our August 2016 comments is misplaced. As the more specific provision of the statute, Section 404(t) not Section 313, governs federal immunity with respect to dredge and fill. The State cannot regulate USACE Civil Works projects for dredge and fill activities where no 404 jurisdiction exists. Further, Rivers and Harbors Act Section 10, 33 U.S.C. § 403, does not apply to USACE's operations and maintenance dredging activities, which are affirmatively authorized by Congress.	As explained in the prior response to comments, there are two provisions of the Clean Water Act that expressly waive sovereign immunity. Where section 404(t) is not applicable, but the Clean Water Act still applies, section 313 may be applicable. Whether sovereign immunity is waived for specific activities requires a fact-specific analysis.
4.14	The participation of a non-Federal sponsor in a USACE Civil Works project does not provide a waiver of sovereign immunity, allowing the State to impose regulations beyond Section 404(t).	Participation of an entity that is not entitled to sovereign immunity in a Civil Works project does not extend the application of section 404(t). Cooperation with the Corps on a civil works project does not extend sovereign immunity to a party not otherwise entitled to sovereign immunity.
4.15	USACE expects the State to defer to USACE with respect to USACE's application of Section 404 to USACE Civil Works projects, despite the fact that USACE does not formally issue itself a Section 404 permit.	Section 404(t) requires that federal agencies that engage in dredge or fill activities comply with state regulations to the same extent as any nongovernmental person. Generally, the Clean Water Act requires the Corps to seek state water quality certification for discharges of dredged or fill material to waters of the U.S. (33 C.F.R. §336.1(a)(1).) As such, the Water Boards will impose limitations in their certification necessary to assure compliance with any appropriate requirements of State law, which includes water

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		quality control plans, for the Corps' Civil Works projects just as it would nongovernmental projects.
4.16	Section IV(A): USACE Civil Works projects are not subject to waste discharge requirements. The USACE must comply with 401 water quality certification, when applicable. This section needs to make clear that the application provisions for federal projects is limited to waters of the US and any application materials related to nonwaters of the US or other state law for which sovereign immunity has not been waived, is not required.	Generally, the Clean Water Act requires the Corps to seek state water quality certification for discharges of dredged or fill material to waters of the U.S. (33 C.F.R. § 336.1(a)(1).) The Procedures do not purport to impose requirements where sovereign immunity has not been waived.
4.17	Section IV(A)(1)(b): USACE often completes verification of an aquatic resources delineation or preliminary/approved jurisdictional determination during the permit review process (i.e. after a complete application is submitted), and sometimes near the end of the permit process. Requiring a USACE verified aquatic resources delineation and/or approved/preliminary JD with the application as identified in the Proposed Dredge/Fill Procedures, could affect the timeline for issuance of a Section 401 WQC, thereby affecting the USACE permit processing timelines, which is not acceptable (see Comment A(3)).	See response to comment # 4.2.

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4.18	Section IV(A)(1)(e): We recommend the Proposed Dredge/Fill Procedures align with the USACE South Pacific Division Map and Drawing Standards (see http://www.spd.usace.army.mil/Missions/Regulatory/Pu blic-Notices-and-References/Article/651327/updated- map-and-drawing-standards/).	Comment noted. The State Water Board agrees that requiring use of these standards would help promote consistency, but the standards are not appropriate for all types of applications. Applicants are encouraged to comply with the USACE South Pacific Division Map and Drawing Standards where possible.
4.19	Section IV(A)(1)(g): As identified in Comment 7(e)(13)(c) of our August 2016 comments, USACE conducts the analysis of alternatives under the Section 404(b)(1) Guidelines based on information submitted by the applicant. The applicant does not submit an alternatives analysis, but submits the information necessary for USACE to conduct the alternatives analysis.	The Procedures have been revised to clarify that an applicant is expected to submit the same information to the Water Boards that is submitted to the Corps when the Corps requires an alternatives analysis.
4.20	In addition, the use of the term "exemption" could result in confusion for our customers. Under the USACE Regulatory Program, activities covered under the Section 404(f) exemptions are discharges that do not require a permit. We recommend the State modify the Proposed Dredge/Fill Procedures to use the term "exception."	Per section IV.D, the application procedures specified in sections IV.A and IV.B do not apply to activities that are exempt from permitting under section 404(f). Because section 404(f) is not mentioned in section IV.A, it is not necessary to use the same terminology.

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4.21	In addition, please consider adding Clean Water Act statutory exemptions under section 404(f) and exclusions from the 404 permitting specified in USACE regulations at 33 CFR 323.2(d)(3), for discharges of dredged or fill material within waters of the U.S.	Per section IV.D, the application procedures specified in sections IV.A and IV.B do not apply to activities that are exempt from permitting under section 404(f). Accordingly, an exemption from the alternatives analysis requirement for section 404(f) activities set forth in section IV.A is not necessary. The Procedures have been revised to include a definition of "discharge of dredged material" consistent with the definition set forth in 33 C.F.R. § 323.2.
4.22	Section IV(A)(1)(h): See Comment B(4)(e). In addition, we recommend the "tiers" align with the USACE procedures as it relates to evaluating alternatives. As a general matter, USACE only conducts a full evaluation of alternatives, including off-site alternatives, when an individual permit is required. For actions that fall under a General Permit, including the Nationwide Permit Program, applicants are required only to demonstrate how they have avoided and minimized adverse effects to waters of the U.S. on the project site. Virtually all actions that fall under a general permit in California have less than 0.50 acre of permanent adverse effects to waters of the U.S. Many of the activities identified as Tier 3 in the Proposed Dredge/Fill Procedures would qualify for authorization under a General Permit, which would not require a full evaluation of alternatives by USACE.	See general response #1.

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	Requiring both on-site and off-site alternatives information for these activities that result in no more than minimal adverse effects to the aquatic environment may result in unnecessary delays and cost burden to the applicant.	
4.23	Section IV(A)(2)(a): Delineations of aquatic resources conducted during the dry season should be addressed as a protocol for conducting the delineation. Currently, USACE does not require supplemental field data from the wet season to be submitted for aquatic resource delineations conducted during the dry season, even on a case-by-case basis. Other data sources, including, but not limited to, soil surveys, satellite imagery, and LiDAR, can assist in supplementing a dry season delineation to estimate boundaries that would be identified during the wet season. Requiring supplemental field data from the wet season may result in unnecessary delays and regulatory burden for applicants.	See general response #7.
4.24	For permittee responsible compensatory mitigation associated with the discharge of dredged and/or fill material into waters of the U.S., we recommend the State require the information identified in 33 CFR 332.4, and the South Pacific Division Regional Compensatory Mitigation and Monitoring Guidelines (see	The Procedures have not been revised to require the information identified by federal mitigation guidance documents, such as the South Pacific Division's 2015 Guidelines, because these documents interpret and offer guidance to the federal 2008 Mitigation Rule rather than establishing new regulations. As set forth in section IV.A, an

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	http://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf) and defer to the USACE District's review and approval of the final mitigation and monitoring plan for permittee responsible compensatory mitigation associated with the loss of waters of the U.S. As proposed, the State may require information different than required by USACE, which may result in the preparation of multiple mitigation and monitoring plans and/or unnecessary delay in the USACE permit evaluation process.	applicant may submit federal application materials to satisfy the corresponding state application requirement. It is anticipated that if applicants are preparing draft mitigation and monitoring plans in accordance with regional guidelines, that the same plan would be submitted to the state. In addition, the South Pacific Division's 2015 Guidelines are similar to the requirements in the Procedures. The guidelines require a watershed approach that is analogous to the watershed approach in the Procedures. These guidelines also require the consideration of the type, amount and condition of aquatic resources (termed "watershed profile" in the Water Board Procedures) as part of the watershed approach. See general response #8.

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4.25	We believe it is unnecessary for the applicant to be required to provide items (i) and (ii)) [in section IV.A.2.c of the Procedures] for proposals to compensate for impacts to waters of the state through purchase of credits from an approved mitigation bank or in-lieu fee program. We do not currently require such information, as mitigation banks and in-lieu fee programs are approved through a rigorous process with agency input through the interagency review team (IRT). The process of approving a mitigation bank or in-lieu fee program includes a review of the proposed service area, and determination of the appropriate service area based on the needs of the watershed, economic, and other factors, as identified in 33 CFR 332.8. In addition, because mitigation banks and in-lieu fee programs are developed and implemented by a sponsor, the information required in (i) and (ii) may not be available to an applicant for an individual proposed activity.	Items (i) and (iii) in section IV.A.2.b (formerly items (i) and (ii) in section IV.A.2.c in the 2017 draft Procedures) apply to proposals to compensate for impacts to waters of the state through purchase of credits from an approved mitigation bank or in-lieu fee program. The draft compensatory mitigation plan elements detailed in Subpart J require that the project proponent address how the anticipated functions of the mitigation project will address watershed needs. Item (i) requires that the applicant compare watershed characteristics at the impact site and mitigation site; item (iii) requires that the applicant analyze how the mitigation proposal will meet the watershed needs. These considerations should apply to project proponents proposing to purchasing credits to ensure that the plan includes rationale as to why the type of credit and mitigation bank or in-lieu fee program location addresses no net loss of aquatic resources at the impact site.

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4.26	Compensatory mitigation plans should not be required for ecosystem restoration projects undertaken by the USACE.	The Procedures require Ecological Restoration and Enhancement Projects (EREPs) to be permitted by the Water Boards, because these projects often have the potential to impact water quality. However, compensatory mitigation plans are not required for EREPs (see section IV.A.2 of the Procedures), including such projects undertaken by the USACE. Instead, the EREP project proponent is required to submit a draft assessment plan that includes project objectives; description of performance standards used to evaluate attainment of objectives; protocols for condition assessment; the timeframe and responsible party for performing condition assessment; and the assessment schedule.

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4.27	Section IV(B)(3)(b): We recommend the Regional Boards always defer to the USACE evaluation of alternatives and determinations of the least environmentally damaging practicable alternative (LEDPA). However, please note USACE makes a determination of the LEDPA based on alternatives information submitted by the applicant (see Comment B(4)(i)), at the time a permit decision is made, not before. For individual permits, we do not complete the permit decision documentation, including the LEDPA determination, until after a CWA 401 Water Quality Certification is issued.	The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. Further, the Procedures encourage coordination with USACE on LEDPA determinations, and other requirements, during the application stage of a project (as applicants routinely do with other agency staff) to ensure, when possible, regulatory consistency. It is expected that early coordination will facilitate final permit/certification approvals.
4.28	In addition, we recommend eliminating the caveats to deferring to USACE determination, as they provide uncertainty and leave much discretion to local authorities, with the potential to create inconsistent application. Finally, we encourage the State to reconsider exceptions to the alternatives information requirements, especially in situations where waters of the U.S. and waters of the state are the same and where alternatives were considered under the California Environmental Quality Act (see Comments B(4)(i) and (j)).	See general response #1.

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4.29	Section IV(B)(4): See comment 7(e)(17) of our August 2016 comments. For the Civil Works program, the USACE determines and approves the final restoration plan, not the State. As noted in our August 2016 comments, the USACE welcomes the permitting authority's suggested edits and comments on the USACE's restoration plan for temporary impacts.	Section 313 of the Clean Water Act states that federal agencies must comply with state laws in the same manner as any nongovernmental applicant, and section 404(t) similarly requires that federal agencies that engage in dredge or fill activities comply with state regulations to the same extent as any nongovernmental person. The State Water Board has broad authority under the Porter-Cologne Water Quality Control Act to adopt water quality control plans that address factors affecting water quality, including the discharge of dredged or fill material. A water quality control plan has the same force and effect as a state regulation. Per section 401(d) of the Clean Water Act, the Water Boards may set for limitations in their certification necessary to assure compliance with any appropriate requirements of State law, which includes water quality control plans. As such, the Water Boards are obliged to ensure state waters are protected in accordance with state law, which includes the Porter-Cologne Water Quality Control Act and CEQA. The Water Boards expect that they can collaborate with the Corps to develop a final mitigation plan.

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4.30	Section IV(B)(5): We recommend the Regional Boards always defer to USACE on determining appropriate and acceptable compensatory mitigation for waters of the state that are also waters of the U.S. As such, the state would only review proposals for non-waters of the U.S. Not deferring, especially in light of the additional requirements identified in (c)-(g) has the potential to produce different and potentially conflicting decisions made by the Regional Boards and USACE District. Lastly, it is not clear when the Regional Boards would approve the compensatory mitigation plan. USACE District approval of such plans normally occurs just prior to a permit decision being made.	See general responses #8 and #10. The Water Boards will work with applicants during the application review stage to ensure that compensation for adverse impacts to waters of the state are well thought out and compensatory mitigation projects are successful. If the applicant does not provide a final compensatory mitigation plan prior to issuance of an Order, the Water Boards would include a condition in the Order that final approval of a mitigation plan must occur prior to when the permittee commences work in waters of the state. In these cases, the Water Boards would approve the mitigation plan by amending the original Order to include the final compensatory mitigation plan. This provision provides the Water Boards with flexibility when there is insufficient time to finalize a compensatory mitigation plan before the issuance of the Order, while ensuring that waters of the state are not adversely affected. As set forth in section IV.B, the permitting authority will consult and coordinate with other public agencies in order to achieve multiple environmental benefits with a single mitigation project.
4.31	Section IV (D): We strongly recommend the State consider applying the Proposed Dredge/Fill Procedures only to Waters of the state that are not also waters of the US.	The Procedures have not been revised in response to this comment. One purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing procedures that

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		are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. The Procedures apply to all discharges of dredge or fill material into waters of the state, not just discharges to waters of the state that are not under federal jurisdiction.
4.32	In addition, see Comment 7(e)(19) in our August 2016 comment letter, identifying we recommend deletion of all references to the USACE RGLs. We note also, if the State retains the list of RGLs in the Final Dredge/Fill Procedures, some of the RGLs identified in Table 2 are not identified on RGL 05-06 as generally still applicable to the USACE Regulatory Program.	The Procedures have been revised in response to this comment; references to specific regulatory guidance letters have been deleted. It is expected that the Water Boards will interpret the scope of section 404(f) consistent with the Corps, and accordingly may use relevant guidance documents as applicable.
4.33	Section V: We recommend the State define “relatively permanent part of the natural landscape.”	See general response #2.

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4.34	Under Subpart J, 230.92, the definition of “debit” is normally applied to a reduction of credits from a mitigation bank or in-lieu fee program. For example, a bank ledger is debited when a bank credit is sold. We recommend the use of a different term of the unit of measure representing the loss of aquatic functions at an impact sites. Furthermore, we recommend “mitigation banking instrument” be changed to “bank enabling instrument,” to be consistent with the nomenclature used statewide by eight federal and state agencies.	The terms “debit” and “mitigation banking instrument” are consistent with federal definitions under Subpart J, 230.92; therefore, the State Supplemental Dredge or Fill Guidelines have not been revised.
4.35	We recommend all elements of Subpart J be consistent with 33 CFR 332, the South Pacific Divisions Regional Compensatory Mitigation and Monitoring Guidelines (see http://www.spd.usace.army.mil/Portals/13/docs/regulat ory/mitigation/MitMon.pdf) and the South Pacific Divisions Uniform Performance Standards for Compensatory Mitigation Requirements (see http://www.spd.usace.army.mil/Portals/13/docs/regulat ory/qmsref/ups/12505.pdf).	Elements in State Supplemental Dredge or Fill Guidelines, Subpart J are consistent with federal procedures to the extent feasible. Section 230.93(l)(2) was not included in the State Supplemental Dredge or Fill to reflect that provisions outlined in (l)(2) are expected to be implemented by the Corps. The State Water Board is not adopting federal mitigation guidance documents, such as the South Pacific Division's 2015 Guidelines, because these documents interpret and offer guidance to the federal 2008 Mitigation Rule rather than establishing new regulations.

Letter 5: Bay Planning Commission

Letter Number	Comment	Response
5.1	While we appreciate the State Board's efforts to create a program that is consistent with the U.S. Army Corps of Engineers ("Corps") current regulatory agreements, we agree with comments submitted by the business and industry coalition of over 45 organizations. As a part of this coalition, we are concerned with the scope of the Procedures relative to its needs and legal authority. As currently drafted, the Procedures will create unnecessary conflict by proposing a new wetland definition that differs from the definition that has been used by the Corps since 1977. This inconsistency will result in different wetland determinations by the Water Board and the Corps, leading to conflicting alternatives analysis determinations and mitigation requirements.	Comment noted, refer to letter #8 for specific responses to comments submitted by the Business and Industry Coalition. Also, see general responses #4, 9 and 10.
5.2	Moreover, we are concerned that the Procedures will place undue burdens on business owners by setting new regulatory requirements that will affect projects from large infrastructure projects to smaller projects needed for operations and maintenance. We understand that, unless modified, the Procedures will delay the Corps' streamlined Nationwide Permit ("NWP") program, subjecting more than 200 NWP-qualified projects each year to costly and time-consuming application requirements. Such added costs and delays will impact small and medium sized businesses, and many local governments, potentially affecting the health, safety, and economic wellbeing of our region.	As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty to the statewide application review process. See general response #6. In regards to the concerns about Corps' Nationwide Permits (also referred to as Corps' General Permits), see general response #1.

Letter Number	Comment	Response
5.3	We support measures to protect wetlands no longer subject to federal jurisdiction without adding duplicative regulatory processes that increase burdens on land and business owners. In conclusion, we encourage the State Board to adopt a program that fills the regulatory gap by protecting non-federal waters of the state as if they were regulated by the Corps' current procedures, including a wetlands definition and delineation techniques that are identical to the definition used by the Corps.	One purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. Limiting the scope of the Procedures to only a subset of waters such as wetlands would complicate the regulatory landscape because there would be two different sets of procedures that would apply to projects that affect both wetland and non-wetland waters. See also general response #4.

Letter 6: Brown, Sharon

Comment Number	Comment	Response
6.1	Please protect our wetlands.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 7: Buena Vista Audubon Society

Comment Number	Comment	Response
7.1	I am writing to you on behalf of the Buena Vista chapter of the Audubon Society to express our support for the proposed statewide wetlands policy regulation (“Procedures for Discharges of Dredged or Fill Materials to Waters of the State”), and to request your support for this important legislation.	The commenter's support for the Procedures is noted.
7.2	Despite these considerations, the U.S. EPA is proposing to roll back federal protections for wetlands. This is unacceptable to us, and therefore the state must step in and do all it can to protect these natural resources. The State Water Resources Control Board stands in a unique position to lead on this issue. We urge you to use your authority to adopt the statewide wetlands policy.	The commenter’s request for adoption is noted.

Letter 8: Business and Industry Coalition

Comment Number	Comment	Response
8.1	While we appreciate the State Board's efforts to create a program that is consistent with the Corps' current regulatory requirements, we continue to have concerns about the scope of the Procedures which are overbroad relative to the needs and legal authority, and the burdens they will place on public and private project sponsors and on Water Board staff.	See general response #9 in regards to the regulatory authority of the Water Boards. The State Water Board developed the Procedures for a number of purposes, one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material to waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California's aquatic resources.
8.2	As currently drafted, the Procedures will create unnecessary conflict by proposing a new wetland definition that differs from the definition that has been used by the U.S. Army Corps of Engineers ("Corps")	See general response #4.

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	Since 1977. This will result in features being classified as a wetland by the Water Board but as non-wetland waters by the Corps, leading to conflicting alternatives analysis determinations and mitigation requirements.	
8.3	Unless modified, the Procedures will slow to a crawl the U.S. Army Corps of Engineers' streamlined Nationwide Permit ("NWP") program. The thresholds under consideration are so low that, ironically, even small projects involving operations and maintenance improvements will be forced to prepare an alternatives analysis. We estimate that each year more than 200 projects that qualify for a Corps NWP will be subject to costly and time-consuming application requirements, forcing project sponsors to engage biologists, engineers, economists, and attorneys to identify, design, and evaluate a range of on- and offsite alternatives. Medium and small businesses and many local governments cannot afford these added costs. Improvements will not be undertaken, and good-paying jobs in disadvantaged rural areas lost.	See general responses #1 and #6.
8.4	Accordingly, if the State Board determines it needs to act, we encourage the adoption of a program that fills the regulatory gap by protecting non-federal waters of the state as if they were regulated by the Corps' current procedures, including adopting a wetlands definition and delineation techniques that are identical to the well- established definition used by the Corps. If the State	Comment noted. The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. In addition, the Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredge or fill material

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	Board nevertheless decides to move forward with the Procedures, we urge it to make the changes outlined in the attached comment package. [In text language change suggestions omitted.]	into waters of the state and to prevent further losses in the quantity and quality of wetlands in California. Limiting the scope of the Procedures to only a subset of waters such as wetlands would complicate the regulatory landscape because there would be two different sets of procedures that would apply to projects that affect both wetland and non-wetland waters. In response to the request to adopt the Corps' technical wetland definition, see general response #4. Also, see the revised Procedures for specific language changes made in response to comments received on the 2017 draft.
8.5	The Proposed State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State - July 21, 2017 Final Draft (Procedures) must not be finalized as currently drafted. It is still a solution in search of a problem, with unintended consequences and significant impacts on applicants, the State Board Water Resources Control Board (State Board), the Regional Water Quality Control Boards (Regional Boards, and collectively with the State Board, the Water Boards), and the public.	See response to comment #8.4 (above).

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8.6	Furthermore, as the U.S. Army of Corps of Engineers (Corps) identified in its comments on the prior June 27, 2016 proposal, the State Board does not have the legal authority to adopt this proposal and it interferes with the Corps' implementation of the federal program. The Coalition shares the Corps' concerns as outlined in our comments dated August 16, 2016, on the prior proposal.	See general response #9.
8.7	The Coalition submitted detailed comments on the prior draft of the Procedures. We urged the State Board, if it was going to proceed, to limit the scope of the Procedures to filling the SWANCC gap, make the Procedures consistent with federal law, and reduce the number of case-by-case determinations to provide for consistent application across the state. By and large, our legal and practical concerns were not meaningfully addressed in the responses to comments, and the fatal defects remain in the current draft of the Procedures and accompanying staff report.	Comment noted. The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. The Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state and to prevent further losses in the quantity and quality of wetlands in California. The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. Limiting the scope of the Procedures to only a subset of waters such as wetlands would complicate the regulatory landscape because there would be two different sets of procedures that would apply to projects that affect both wetland and non-wetland waters.

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		Finally, the Procedures have been revised to reduce the number of case-by-case determinations, including the determination of when a wetland is a water of the state and when an alternatives analysis is required. Also, see general response #7.
8.8	Our comments focus on specific concerns and detailed solutions. Most notably, the proposed California-specific technical wetlands definition has been an extremely frustrating issue for the Coalition. As explained further below, there is no practical reason for a different technical definition of "wetland." California gains nothing and only creates confusion. The Coalition has yet to receive an answer from State Board staff why the existing federal framework is not adequate to address its concerns or why specific resources of concern cannot simply be identified in the proposal. Other serious concerns include the way wetlands are defined as WOTS, the wetlands delineation procedures, the need to better define exclusions from the Procedures, the alternatives analysis requirement and other application requirements, and compensatory mitigation requirements.	See general responses #1, #2, #4, #8, and #12.
8.9	Additionally, the Coalition's prior comments, dated August 18, 2016, including all our arguments about the legal insufficiency of the Procedures, are Incorporated herein by reference but are not repeated below.	Comment noted. Please refer to the July 21, 2017 Response to Comments to comments submitted on August 18, 2016.

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8.10	We ask that the State Board carefully consider the Coalition's comments and redline suggestions and, if the State Board decides to not accept the Coalition's necessary changes, we ask that an explanation of why not be provided to the Coalition.	Comment noted.
8.11	The Procedures, as written, will impose unnecessary burdens on the regulated community and on Water Board resources that are far greater than the State Water Board has recognized. The Procedures establish a permitting program with new application procedures, new substantive standards, and new mitigation requirements that apply to all wetland and nonwetland waters of the state. The new program will significantly overlap, and in some cases conflict, with permitting requirements for the federal Clean Water Act Section 404 permitting program and other state permitting programs including the California Department of Fish and Wildlife's streambed alteration program. The overlap and the unnecessarily broad scope of the Procedures will create confusion, duplicative regulation, additional workload for Water Board staff, and additional cost and delay for applicants, while exposing the state to significant new litigation costs and risks / burdens that far outweigh the limited purported benefits that staff asserts may be expected from imposing this additional layer of regulation on activities already	The Procedures will not create a new regulatory program. The Water Boards established the state water quality certification program in 1990. As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal, thereby reducing the number of information requests and expediting the application review process. See also general response #10.

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	subject to comprehensive federal and state oversight.	
8.12	Analysis of activities authorized under the Corps nationwide permit (NWP) program illustrates the increased costs and unnecessary regulatory burdens that the Procedures will impose, in particular by significantly increasing the number of detailed alternatives analyses performed. Under the scope of existing state-wide activity, hundreds of detailed alternatives analyses, that would not otherwise by conducted, will be required. Based on information obtained from the Corps through a FOIA request, the Corps authorizes approximately 700 activities through NWPs in California each year, all of which would be subject to the new tiering requirements in the Procedures.	See general response #1.
8.13	Based on the acreage impact limits associated with the tier (i.e., > 0.1 acre), and utilizing the Corps FOIA data, there will be an average of 216 projects qualifying for NWPs annually that will require a detailed alternatives analysis due to the Procedures. This represents a substantial amount (16%) of the 1,289 permit applications that the Board states it receives annually, and would ensnare 31% of the projects that qualify for streamlined permitting at the federal level through the NWP program. This will add to costs for applicants as well as the time necessary to process 401 Water Quality Certifications for these activities. In fact, this is likely a conservative	See general responses #1 and #6.

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	estimate. The number of projects authorized by a NWP that will require an alternatives analysis due to the Procedures will likely be higher, as the linear-feet threshold for impacts requiring an alternatives analysis in the Procedures is 100 feet while most NWPs have a 300-foot limit. In addition, activities that impact certain specified habitats — including any "bog, fen, playa, seep wetland, vernal pool, headwater creek, eelgrass bed, anadromous fish habitat, or habitat for rare, threatened or endangered species"— will always require an alternatives analysis regardless of the amount of impact.	
8.14	The Coalition looked into the additional costs associated with the application of the Procedures to all 401 water quality certifications (see Attachment 1). The additional costs come from the review of alternatives analyses (including those required for NWPs) as well as from procedures and requirements that would apply to all water quality certifications, such as the potential collection of wet-season data, additional mapping during the delineation process, and collection and mapping of data required for the Watershed Profile that is required as part of a mitigation plan under the Procedures. As summarized in Table 2 below, the additional costs are have an annual cost to applicants of over $47 million, adding up to $114,000 per project, and require an additional 16 full-time employees (FTE) at a minimum for the Water Boards to process. Additional personnel will be required to (i) review the alternatives	See general response #6. The comment's estimated additional costs do not accurately reflect current practices at the Water Boards for processing applications to discharge dredged or fill materials or the level of effort that would be required under the Procedures. In addition, the Procedures have been revised in a way that change some of the underlying assumptions presented in this analysis.

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	Analyses prepared for other activities authorized by the Corps under individual permits, (ii) review alternatives analyses under the Procedures for activities impacting only non- federal WOTS, (iii) verify delineations of non-federal WOTS, and (iv) review and consider climate change analyses and information included in watershed profiles. Ultimately, the full cost of application of the Procedures will be considerably higher for applicants and the Water Boards than this estimate due to additional documents to be prepared in support of the program (e.g., Watershed Plans), delays in permit processing, and contradictory policies applied by the State compared to the EPA and Corps.	
8.15	For example, we find it hard to believe that if 16% (at a minimum) of the 1,289 permit applications that the Board states it receives annually now require a detailed alternatives analysis that there will be no requirement for additional Water Board staff and resources. It defies all experience with implementation of complex regulatory programs and common sense. The State Board must address the fact that this will in effect be a new permitting program, with new burdens on applicants and the Water Boards, and examine if the Water Boards have the capability to implement this new permitting program with existing resources. If Water Boards do not have such capability, as is shown by the above analysis, the economic consequences of adopting the Procedures, including delay to infrastructure	See general responses #1 and 6. The level of effort required for an alternatives analysis shall be commensurate with the significance of the impacts resulting from the discharge. Not all alternatives analyses will require a level of detail that would necessitate significant additional time to prepare or review.

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	and development projects statewide, could be substantial and the State Board has an obligation to examine and quantify those consequences prior to adopting its proposal.	
8.16	As noted above, an additional 16 FTEs at a minimum are estimated to be required just to process the 401 water quality certifications under the Procedures. If additional staff are not available, delays in processing water quality certifications and waste discharge requirements (WDRs) will result. The costs of delays to applicants — including public agencies such as Caltrans, Department of Water Resources High Speed Rail, and water and flood control districts — are significant and could halt projects altogether. Costs include carrying costs to retain property, increased costs to secure mitigation (including mitigation bank credits), and increased construction costs. These significant delays will only be more pronounced in the beginning of this new program, before Water Board staff have been adequately trained in wetland delineation, reviewing watershed profiles, conducting alternatives analyses, etc. Additional delays could result if Water Board staff need to devote time to supporting the legal defense of permitting decisions in litigation by environmental or labor opponents or project applicants, which will only further reduce the time	See general response #6.

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	available for processing new applications under the Procedures. Given the State's desire to improve our infrastructure using new taxes such as the gas tax, the public expectation for these improvements will be high, and delays will only result in additional costs without substantial benefits to the environment.	
8.17	Additional costs and delays can also result from conflicting determinations that are likely under the Procedures. For example, as explained below, the proposed State Wetland Definition differs from the definition used by the Corps, which could result in the same feature being classified as a wetland by the Water Boards but as an "other water" by the Corps. This different classification will increase costs for project applicants performing delineations. The different classification could also result in different mitigation requirements from the two agencies for impacts to the same feature.	See general response #4.
8.18	A critical initial step is for the State Board to limit the application of the Procedures to "wetlands" and other "special aquatic sites" that are not waters of the U.S. Taking this step will decrease the burdens otherwise imposed by the proposal. Protecting these features was the State Board's stated goal in initiating development of its new regulatory program. Wetland waters of the U.S. are already subject to regulation under the Corps' Section 404 permitting program. The Coalition strongly opposes application of the Procedures to all WOTS.	The Procedures have not been revised in response to this comment. Sections 6.1 and 6.2 of the Staff Report explain the need for the Procedures. Establishing Procedures that are applicable to both federal and non- federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. Also see general response #10.

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8.19	Coalition members urge all the State Water Board to revise the draft Procedures in five key areas to minimize conflict with existing regulatory programs and requirements: 1) Keep the wetland definition and delineation procedures consistent with their federal counterparts under the Corps' Section 404 program; 2) Harmonize the exclusions from the Procedures with federal law; 3) Identify non-wetland WOTS subject to the Procedures and include guidance for determining the limits of such features that is consistent with Corps practice; 4) Eliminate the requirement of an alternatives analysis for all discharges subject to streamlined permitting procedures under Corps-issued general permits; and 5) Make the mitigation requirements and priorities of the Procedures consistent with the Corps' mitigation rule.	State Water Board responses to each of the requests in this comment are as follows: 1) See general response #4. 2) See general responses #2 and 3. 3) See general response #11. 4) See general response #1. 5) See general response #8.

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8.20	It is critical that the State Board phase in the effective date(s) of key provisions of the Procedures with greatest potential to conflict with the Corps' permitting program. State Board staff have stated that a memorandum of understanding (MOU) with the Corps will be necessary. These key provisions of the Procedures should only become effective after the State Board enters into this MOU with the Corps and provides a framework that reconciles this new state permitting program and existing federal permitting program.	The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures.
8.21	The Coalition supports the decision to move away from case-by-case determinations of whether a potential wetland feature is subject to regulation by including in Section II a wetland definition and guidance for determining when a wetland is, or is not, a WOTS. But, by including a wetland definition and delineation procedures that are inconsistent with the Corps' wetland definition, the Procedures as currently written would create uncertainty, confusion, and conflict, for no apparent purpose.	See general response #4.

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8.22	To the extent the State Board desires to apply the Procedures to certain special aquatic features that may not qualify as "wetlands" under the Corps' definition, this still does not require adopting a different wetland definition. Even assuming the State Board accepts the Coalition's recommendation to defer regulation of non- wetland WOTS, the Board could simply amend the Procedures to enumerate those special aquatic features that will be subject to the Procedures even when they do not qualify as wetlands under the Corps definition and guidance.	See general response #4.
8.23	As many commenters noted on the 2016 version of the proposal, it would be far more straightforward to simply rely on the Corps definition to provide consistency in the wetland regulatory arena. After all, Governor Wilson's EO W-59-93 states that the agencies shall "develop a consistent regulatory wetlands definition for State agencies that improves the overall efficiency of the Federal-State permitting process." Similarly, the State Board previously concluded that the federal wetland definition was sufficient. Seeking a "standard metric," the State Board identified the adoption of "the federal regulatory definition" as a key step in its workplan for wetland protection. See Workplan: Filling the Gaps in Wetland Protection (September 2004), at 4. The State Board should adopt the Corps' wetland definition without change, and revise the delineation procedures accordingly	The commenter is correct that "the State Board identified the adoption of 'the federal regulatory definition' as a key step in its workplan for wetland protection." The 2004 *Workplan: Filling the Gaps in Wetland Protection* (Workplan) was initiated to address the waters of the state that were no longer protected under the Clean Water Act. The Workplan specified the need to adopt a state wetland definition to "provide a standard metric to help determine compensatory mitigation requirements and compliance with [the] 'no net loss' policy [Executive Order W-59-93]." In addition, the Workplan included developing a statewide policy for wetland protection "at least as protective as the federal requirements." To immediately address part of "the gap," the State Water Board adopted general waste discharge requirements for minor discharges

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	to reflect that the same definition will be used to delineate wetland waters of the U.S. and non- federal wetland WOTS.	to non- federal waters (Water Quality Order 2004-0004 May 4, 2004). However, despite the Workplan, adoption of Order No. 2004-0004, and the efforts of the state's 401 program, California continued to lose functional wetlands at an increasing rate. In response to these losses, the State Water Board adopted Resolution No. 2008-0026, which identified the need for a strong statewide wetland policy to ensure no further net loss and ultimate long-term gain in the quantity of functional wetlands and riparian areas within the state. Resolution No. 2008-0026 directed staff to examine environmental issues, evaluate the relevant alternatives, and make recommendations regarding the policy. To ensure a comprehensive scope, *staff was directed to consider additional alternatives and recommendations other than those outlined in the 2004 Workplan.* As part of Phase 1 of the policy, staff was also directed to develop and bring forward a wetland definition that would reliably define the diverse array of California wetlands based on the Corps' wetland delineation methods to the extent feasible. In its task to develop and adopt a consistent wetlands definition for state regulatory purposes, the No Net Loss Policy specifically establishes that: "Because of the lack of consistency in the existing

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		definitions of wetlands definitions used by State agencies, the State will work toward the adoption of a single definition for regulatory purposes. The definition will, to the greatest extent possible, be consistent with the definition and wetlands delineation manual used by the Federal government." The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. However, establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. Finally, please note that the wetland delineation procedures As set forth in Section III, the Procedures require use of the Corps delineation methods through application of the Corps manuals and regional supplements when determining if an aquatic feature meets the proposed wetland definition. A wetland delineation does not determine jurisdiction. Also, see general response #4.

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8.24	As an initial matter, this particular issue has significantly frustrated our Coalition, and it illustrates the larger concerns we have with the proposal. There is no practical reason for a different technical definition of “wetland” between the federal and state regulatory program. California gains nothing and only creates confusion, which will likely lead to unintended consequences. If there are specific features that the State Board is concerned with that are not adequately addressed by the Corps Delineation Manual and the Arid West Supplement, those features can be specifically identified in the proposal as “wetlands” in California. If that suggested approach will not address staffs’ concerns, why not? The State Board must obtain an answer from staff why that approach will not address whatever it is they are concerned will not be addressed in the proposal. We have not yet received an answer from staff and this is an absolutely critical issue. There are subtle but meaningful differences in the soils and vegetation parameters that will lead to	Comment noted. See response to comment #8.23 and general response #4.

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8.25	inconsistent outcomes in the application of the federal definition and the State Wetland Definition. The proposed State Wetland Definition relies on the presence of an anaerobic substrate rather than a hydric soil. The differences in the vegetation parameter is even more significant. Unlike the Corps' definition, the State Wetland Definition allows any barren area that is inundated or saturated for 14 days to be considered a wetland.	The Corps definition refers to "saturated soil conditions," whereas the Water Board definition refers to saturated substrate leading to "anaerobic conditions in the upper substrate" which is a more inclusive term. However, both of these descriptions are functionally equivalent because both define conditions that would lead to dominance of hydrophytes, if the site is vegetated. Also, see general response #4.
8.26	In their response to comments, State Board staff indicated they do not want to revise the proposed Technical Advisory Team definition because they will rely on Corps delineations and substantially on the Corps methodology, as set forth in Section III of the Procedures. However, the Section III of the Procedures states that the "[t]erms as defined in these Procedures shall be used if there is conflict with terms in the 1987 Manual and Supplements" and that "[t]he methods shall be modified only to allow for the fact that the lack of vegetation does not preclude the determination of such an area that meets the definition of wetland." The modification of the definitions that have been standardized in the Corps Manual and Supplements will only further cause further confusion, will not be enforced by the Corps, and, in some cases, are contrary to existing federal regulation and policy.	"The methods shall be modified only to allow for the fact that the lack of vegetation does not preclude the determination of such an area that meets the definition of wetland. Terms as defined in these Procedures shall be used if there is a conflict with terms in the 1987 Manual and Supplements." This language was included in case of any unforeseen inconsistences.

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8.27	Section III of the Procedures instructs the permitting authority to rely on a wetland delineation with a Corps- issued preliminary jurisdictional determination (PJD) or approved jurisdictional determination (AJD) "for the purposes of determining the extent of wetland waters of the U.S." But Section III also states that a "delineation of non-federal wetland areas" must be performed using the definition in the Procedures. It is hard to overstate how this directive to delineate wetlands, using two different definitions, will cause significant confusion and conflict when applied in the field and could lead to differing regulatory outcomes.	Separate delineation reports need not be prepared if the report is clear about distinguishing waters of the U.S. from waters of the state. Section IV.B.2 further states that the Water Boards will defer to the Corps within the boundary of waters of the U.S. It is reasonable to provide deference to the Corps on the location and characteristics of federal waters, but ultimately, it is the Water Boards' responsibility, not the Corps', to ensure that all non-federal waters of the state are adequately identified and delineated. Given the nature and complexity of the natural environment, and the potential for isolated waters of the state to be interspersed with jurisdictional waters of the U.S., it is not reasonable to expect that the Water Board review would be limited to only those areas outside the Corps' project area.
8.28	Most projects involve discharges to waters of the U.S. as well as WOTS and will receive a PJD or AJD from the Corps – typically, a PJD. Under a PJD, any aquatic feature meeting the Corps' definition of a wetland will be assumed to be a water of the U.S. Aquatic features not meeting the Corps' wetland definition, including features that might be considered unvegetated wetlands under the Procedures, will be classified as non-wetland waters of the U.S. if they do not fit within a federal exemption (e.g., certain ponds not considered waters of the U.S.). In this situation, it is not necessary to perform a "delineation of non-federal wetland areas potentially impacted by the project"	The Procedures were revised clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2), including reports verified per Corps RGL 16-01. In response to the commenter's concerns regarding additional delineations, see response to comment #8.29 (below).

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	using the State Wetland Definition and guidance, as currently stated in Section III of the Procedures. An additional delineation is not necessary because there are no non-federal wetland areas that might escape regulation. Performing an additional delineation will only introduce confusion, as it may result in some unvegetated features that were classified as non-wetland waters under the Corps PJD being reclassified as wetlands under the state's delineation, which will likely result in different mitigation requirements under federal and state law for impacts to the same feature. Further practical difficulties would arise in defining the extent of the feature — when classified as a non-wetland water of the U.S., its boundaries would be determined by the ordinary high water mark, but as a "wetland" WOTS under the Procedures, its boundaries would be determined based on the extent of the "wetland" parameters: only 14 days of inundation and presence of anaerobic substrates.	
8.29	For projects that receive an AJD, some features may be delineated as wetlands under the Corps' definition but may be determined to not be waters of the U.S. because, e.g., they are "isolated." However, these "non-federal wetland areas" would still be identified in the delineation. There is no need to perform an additional delineation of these areas using a different wetland definition. Doing so would only create the same potential for confusion described in the preceding paragraph. Instead,	Separate delineation reports need not be prepared if the report includes all potential waters of the state. Any non-federal wetlands (e.g., unvegetated wetland areas or isolated wetlands) should be delineated as a state- only wetlands. Section IV.B.2 states that the Water Boards will defer to the Corps regarding the boundaries of waters of the U.S. It is reasonable to provide deference to the Corps on the location and characteristics of federal waters, but ultimately, it is the Water Boards'

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	if the State Board seeks to regulate these wetlands, it need only specify that such wetlands are WOTS and that the Procedures apply to them — as it has already done in Section II of the Procedures (subject to the exclusions defined in Section IV.D).	responsibility, not the Corps', to ensure that all non-federal waters of the state are adequately identified and delineated. Given the nature and complexity of the natural environment, and the potential for isolated waters of the state to be interspersed with jurisdictional waters of the U.S., it is not reasonable to expect that the Water Board review would be limited to only those areas outside the Corps' project area.
8.30	For projects that have not received a PJD or AJD, because they lack aquatic features that potentially qualify as waters of the U.S., the State Board presumably intends to require a wetland delineation using the definition found in the Procedures. While this situation does not present the same potential for conflict with a federal JD, use of a different wetland definition is still unnecessary. In such a case, the federal definition will identify those features that meet the scientific definition of a wetland, and the Procedures will apply to them unless they are artificial wetlands defined as non-WOTS in Section II, or fall within one of the exclusions found in Section IV.D. Any unvegetated WOTS that are not delineated as wetlands will still be subject to regulation under the Procedures as currently written. However, if the State Board is concerned about ensuring that certain types of unvegetated features, such as mud flats or playas, do not escape regulation, it could amend the Procedures to	See general response #4.

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	explicitly state that the Procedures apply to these features.	
8.31	The application of different wetland definitions has practical implications as well. Under both the Corps' 404(b)(1) Guidelines and the State Supplemental Dredge or Fill Guidelines, there is a rebuttable presumption that practicable alternatives are available for impacts to special aquatic sites, which include wetlands (as well as sanctuaries and refuges, mud flats, vegetated shallows, and riffle and pool complexes). No such presumption exists for impacts to jurisdictional waters that are not wetlands. As described above, an open water feature with no vegetation would likely be designated as a wetland under the State Wetland Definition but as an "other water" (i.e., non-wetland) by the Corps. In the alternatives analysis, the Water Boards would be required to apply the presumption that practicable alternatives are available, but the Corps would not. This could lead to different outcomes. In the September 6 hearing, staff appeared to be aware of this potential conflict, and while a clear proposal to address the issue was not presented, there was some discussion of deferring to the Corps' presumption, or absence thereof, in certain limited circumstances. Since it is not clear how staff intends to address this, we cannot fully evaluate this option, but this is another example of a problem that arises from the use of different definitions, requiring yet another special "fix."	See general response #4. Note that open waters would fail out of both the Corps and the Water Board's wetland definitions. The Water Board's wetland definition would be applied through adoption of the Corps' delineation manuals, incorporated into the Procedures. Open water features would be delineated as deepwater aquatic habitat, which are areas that are permanently inundated at mean annual water depths >6.6 ft or permanently inundated 6.5 ft. in depth that do not support rooted emergency or woody plant species. The State Water Board released the revised Final Procedures for public review more than 30 days prior to proposed adoption. Revisions to the Procedures were logical outgrowths of the noticed proposal, and accordingly the State Water Board does not intend to provide another written comment period. Verbal comments will be heard at the Board meeting for adoption.

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	We ask that any "fix" proposed by the State Board be shared with the Coalition for review and comment before the State Board takes any final action.	
8.32	Similar issues occur with mitigation. Both the federal Mitigation Rule and the State Supplemental Dredge or Fill Guidelines state "in-kind mitigation is preferable to out- of-kind mitigation because it is most likely to compensate for the functions and services lost at the impact site. Thus, the required compensatory mitigation shall be of a similar type to the affected aquatic resource." See, e.g., State Supplemental Dredge or Fill Guidelines § 230.93(e). Out-of-kind mitigation is allowed if deemed appropriate under the watershed approach, but generally requires higher mitigation ratios to offset the difference in functions and services. *Id.* Thus, a feature classified as a wetland by the Water Board and an "other water" by the Corps would likely need to provide additional mitigation to satisfy each of the agencies' compensatory mitigation requirements.	See General Response to comment #4 When determining the type of mitigation that is required, the focus is on structure and function rather than the label applied to the resource. As defined in section 230.92 of the State Supplemental Guidelines, "in-kind" means "a resource of a similar structural and functional type to the impacted resource." Thus in the commenter's example, how a feature is classified for regulatory purposes will not change what is required for in-kind mitigation. For example, even though a unvegetated playa lake may be classified by the Corps as an "other water" and as a "wetland" by the Water Boards, both agencies will examine the structure and function of the playa lake – an analysis that should not be affected by the label applied – and prefer that mitigation is "in-kind" in that the mitigation will replace the lost structure and function. Thus the Corps and the Water Boards would be in agreement on preferring mitigation in the form of playa lake replacement despite having a difference in classification.

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8.33	Because a separate wetland definition is not needed and would lead to conflicting regulatory outcomes, the State Board should revise Section II of the Procedures to adopt the Corps' wetland definition, including the Arid West Manual, without change and to eliminate reference to a separate wetland delineation in Section III. If it does not do so, then, at a minimum, the State Board must revise Section III of the Procedures to provide that a separate wetland delineation using the definition in the Procedures is required only when the Corps has not issued a PJD or AJD.	See general response #4. In addition, the Procedures have been revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2), including reports verified per Corps RGL 16-01. Section IV.A.1.c, Items Required for Complete Application, has also been revised to direct the applicant to submit a delineation of any waters, including wetlands delineated as described in section III, that are not delineated in an aquatic resource delineation report verified by the Corps. This requirement applies in cases where waters outside of federal jurisdiction are present, or in cases when the project qualifies for a non-notifying NWP. This requirement reflects that all wetland waters of the state, whether they are inside or outside of federal regulation, require delineation. Those delineations prepared to satisfy Corps application requirements may be submitted to the Water Boards to satisfy state application requirements.

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8.34	Section II of the Procedures includes a "framework" for determining whether a feature that meets the technical definition of a wetlands will be considered WOTS, and identifies certain artificial wetlands that generally will not be considered WOTS (even when they exceed one acre, which is an important clarification that should be retained).	Comment noted.
8.35	The framework includes certain exclusions, which the Coalition supports. As explained below, the list of exclusions must be revised and supplemented to harmonize the Procedures with federal law and to minimize unnecessary burdens on the regulated community. The revised and additional exclusions are noted in the Coalition's redline version of the Procedures (Attachment 3). If the State Board declines to exclude these features from the framework defining WOTS (as described in this Section II.A.3 and in Section II.B1, below), then the features should be excluded from the application of the Procedures (as described below in Section II.C) or, at a minimum, should not be subject to the alternatives analysis requirement (as explained below in Section II.D).	See general response #2 and 12.
8.36	Additionally, the burden must not fall on the applicant to demonstrate that a feature is not a WOTS. However, if the State Board places the burden of proof on the applicant, it must clarify that in any Water Board enforcement action for a violation of the Porter-Cologne Water Quality Control Act, the burden to demonstrate an aquatic feature	The Procedures provide a jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. The jurisdictional exclusions rely upon facts that the applicant will

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	is a WOTS remains with the Water Boards.	be in a better position to provide than the Water Boards; therefore, it is appropriate that the burden of proof falls on the applicant to demonstrate that the exclusion applies. The Procedures do not alter the burden of proof in an enforcement action.
8.37	First, the Procedures must recognize as not WOTS the same class of features that are recognized as not waters of the U.S. in Corps regulations and guidance. This includes prior converted cropland, which the Corps' regulations provide are not a water of the United States. 33 C.F.R. § 328.3(8). (By contrast, the Procedures merely provide an exclusion for application of the Procedures but reserve the right to issue WDRs, etc.)	See general response #3.
8.38	It also includes the features identified in the preamble to the waters of the U.S. rulemaking: 1) Ditches dug on dry land that do not drain wetlands such as roadside ditches and ditches to reduce stormwater flooding around residential and industrial areas; 2) Artificially irrigated areas that would revert to dry land should application of water to that area cease; 3) Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds; 4) Artificial reflecting ponds or swimming pools created in dry land;	See general response #2 and 11.

Comment Number	Comment	Response
	5) Small ornamental waters created in dry land; 6) Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water; 7) Erosional features, including gullies or rills. Examples of features excluded under federal law are shown in Figure 3. This is good policy. in an era of limited resources, it makes little sense to regulate features that are often small in size or temporary in nature and generally recognized as not providing substantial functions and values.	
8.39	In addition to perpetuating this exemption, the State Board policy should also clarify that this nonexclusive list of artificial ponds constructed in dry land should include lakes and ponds created for recreational or visual amenity purposes and lakes and ponds that are maintained for commercial, as well as industrial, purposes. Furthermore, there should be no size limitation to these features as is currently being considered. The regulation should not provide disincentives to economic activity by establishing that man-made aspects of commercial enterprises can forever impair future uses of the property.	The Procedures have not been revised in response to this comment. Recreational and aesthetic purposes were not included in the wetland jurisdictional framework under section II.3.d because those terms are subject to overly broad interpretation. As explained in section 6.5 of the Staff Report, using a specific size limitation will help to provide regulatory certainty to the owners of such features and the public about whether or not any given feature is a water of the state under this category. Therefore the Procedures specify that artificial wetlands that are greater than or equal to one acre in size will be considered a water of the state unless the applicant can show that the wetland was created, and is currently used and maintained for any of the purposes listed above. In considering the appropriate size threshold, the Water Boards considered the wetlands proportional

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		effect on the overall health of the watershed. The larger the wetland, the more difficult it would be to replace lost functions and services. The Water Boards have an interest in protecting large artificially-created wetlands because the wetlands are more likely to confer environmental benefits that reach beyond the boundary of the wetland itself. The people of California are also likely to have a greater expectation of permanence for larger wetlands. Setting a smaller threshold would capture more features that potentially provide ecological benefit, but could also include features that the Water Boards have historically not regulated. Ultimately, the Procedures set the size threshold at greater than or equal to one acre as a reasonable balance of interests. See also general response #2.
8.40	Eliminate the recapture of artificial wetlands resulting from historic human activity and that have become relatively permanent parts of the natural landscape: The State Board also must eliminate the category of artificial wetlands in Section II.4.c of the Procedures that "[r]esulted from historic human activity and has become a relatively permanent part of the natural landscape." This definition is unclear and could apply to virtually any artificial wetland, since all artificial wetlands, by definition, "resulted from historic human activity," and virtually all could be considered "relatively permanent" if they have existed long enough to create anaerobic substrate.	See general response #2.

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	As written, the category threatens to swallow the exclusions in Section 4.d. For instance, a stormwater detention basin in long use could result from historic human activity, be relatively permanent, and exist as part of a natural landscape. If the State Board wishes to retain this category it must specifically define what is meant by "historic human activity," "relatively permanent" and "natural landscape." This change is needed to retain exemptions consistent with those recognized under federal law and to provide the public with a clear understanding of which features would be subject to regulation. It is also needed to ensure that the Procedures are consistent with staff's representation at the September 6, 2017 hearing, where it was explained that this category of waters was intended to capture only areas "that have been abandoned and have developed wetland features." The Procedures provide no guidance on what "abandoned" means and in many cases, projects subject to lengthy environmental or development review may not have had physical activity for many years, but have not been abandoned from consideration for development by their owners.	

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8.41	The staff report in support of the Procedures further noted, by way of example, that "[t]he jurisdictional framework is intended to exclude artificially-created, temporary features, such as tire ruts or other transient depressions caused by human activity from regulation, while still capturing smaller, naturally-occurring features, such as seasonal wetlands and small vernal pools and yet may be outside of federal jurisdiction." Because one of the purposes of the Procedures is to clarify what is, and what is not, regulated, the Procedures themselves should include language that recognizes that transient depressions can be restored as part of routine site maintenance and without requiring owners and operators to retain such conditions that might otherwise develop into wetlands if abandoned. More specifically, Section II.4.c should define regulated artificial wetlands to include a wetland that "Resulted from historic human activity and has become a relatively permanent part of the natural landscape after being restored or the land use which created the artificial wetland / water is no longer occurring" We also believe the following should be excluded: depressions where wetland / non-wetland waters occur in uplands that are caused by livestock, or wildlife; soil; settlement on constructed land surfaces; and recreational activities unless the land use which created the artificial wetland / water.	The depressions described in the comment may not be considered waters of the state if they meet certain criteria in section II of the Procedures. Section II has been revised to state that all artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in 2, 3.a, 3.b, or 3.c are not waters of the state. Also see general response #2.

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8.42	Eliminate the reliance on historic definitions of waters of the U.S.: Certain provisions in Section II should be revised to avoid reliance on federal regulations, case law or JDs that may be outdated or unlawful. The Procedures provide that all wetlands meeting "current or historic definitions of 'waters of the United States'" are WOTS. A footnote explains that this includes features determined to be waters of the U.S. in an AJD or a PJD on which a permitting decision was based; and features consistent with "any current or historic final judicial interpretation of 'waters of the U.S.' or any current or historic federal regulation defining 'waters of the U.S.'" This criterion is problematic for three reasons. First, determining jurisdictional status based on PJDs is improper and directly conflicts with the scope and intent of the Corps regulatory program. This is because the fact that a PJD was used as the basis for a prior permitting decision does not necessarily mean that every feature identified in the PJD meets jurisdictional criteria under current normal conditions. In addition, the applicant may not have had an incentive to contest the jurisdictional status of a feature when seeking a prior permit because, for instance, no discharge to the feature in question was proposed. Second, the reliance on "historic definitions" creates confusion because it is not clear which historic definitions are included and which may be developed in the future. Board staff would need substantial guidance as to how to apply historic definitions and manuals and without reference to such decisions,	See general response #2. In addition, the Procedures were revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2), including reports verified per Corps RGL 16-01.

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	the public will be confused as to which may apply. it is unclear if the Clean Water Rule, 80 Fed.Reg. 37054 (June 29, 2015), would apply. The rule was issued by the Corps and EPA in 2015 but was immediately challenged. It never went into effect in certain parts of the country and was ultimately stayed nationwide pending resolution of consolidated litigation. The administration is now taking steps to rescind the rule. Finally, when a potential buyer of a given parcel of real property is doing their due diligence, they rightly rely on the rules and regulations in place at the time of acquisition to appropriately gauge the regulatory implications for their prospective use of that property. A prior JD may or may not be readily available in the public record regarding the property. An acquirer that made an appropriately thorough due diligence review related to current laws and regulations should not be subject to the risk of later being held to a determination on jurisdiction that is now inconsistent with law and that could not have been readily found in the exercise of reasonable diligence.	
8.43	Reliance on historic definitions of waters of the U.S. must be removed to avoid current and future confusion as to what manuals or definitions are applied. PJDs should be relied on only if requested by an applicant.	See general response #2.

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8.44	Add exclusions for industrial and agricultural containment features and actions for maintenance of facilities covered by existing Orders: Because the state definition as proposed excludes vegetation, the framework must exclude industrial and agricultural ponds and features that are designed to avoid discharge of pollutants to state waters. Such features include oil containment basins around storage tanks, process water storage from oil extraction, animal waste storage ponds, and other industrial or agricultural process water storage (Figure 4). These features should be excluded from WOTS for purposes of the Procedures, whether or not they are deemed “wetlands” under the state’s new definition. Leaving it to the individual Water Boards to make these decisions is likely to lead to inconsistency and substantially increase uncertainty and cost (because the features would need to be delineated and a resolution of their jurisdictional status worked out on a case-by-case basis) for the regulated community without any concomitant benefit. In addition, these facilities are usually regulated under existing Water Board Orders. Compliance with the Procedures could conflict with the requirements of the existing Orders. Projects in this category of exceptions would also include regulated remediation or post-closure maintenance measures, such as maintenance of landfill caps, that are likewise subject to site specific Orders that require elimination of depressions and management of settling impacts, etc. as part of the maintenance obligations.	See general responses #2 and #12. In regards to remediation sites, it is not expected that active remediation sites would qualify as a wetland under the Procedures’ wetland definition in section II due to the lack of continuous or recurrent hydrology or the size of the feature. Also note that the Procedures were revised to state that “All artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in [section II] 2, 3.a, 3.b, or 3.c are not waters of the state.”

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	Including an exception for maintenance of facilities covered or required by an existing general or individual Order would address this potential for inconsistency.	
8.45	Finally, actions involving ground disturbance specifically required to comply with nuisance and abatement orders issued by a fire department, mosquito abatement districts, or similar authority should be exempt from the requirements to secure WDRs for WOTS. As noted repeatedly in these comments, the review contemplated under the Procedures is time consuming and, if applied to nuisance and abatement actions, would make timely compliance with the orders impossible.	The Procedures have not been revised in response to this comment. It is not clear what specific type of activity the commenter is referring to, but if the aquatic resource is an artificial wetland that is excluded from the definition of a water of the state, then the associated nuisance or abatement action would not be subject to the Procedures. However, if a nuisance or abatement action involves a discharge of dredged or fill material to waters of the state, the action must comply with the Procedures.

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8.46	Active remediation sites subject to Water Board or other local, state, or federal regulatory oversight and/or control should also be excluded. For example, in Santa Barbara County, many oil facilities, including storage tanks are being removed. The process of abandonment, characterization, remediation, and monitoring take many years and during that time, water must be retained on site to avoid discharge of pollutants offsite. This is not an unusual situation for remediation projects and in some cases may go on for a decade or longer. However, such features may be considered "waters of the State" as they pond water and may have saturated substrates (Figure 5). These features do not necessarily fall under the proposed exemptions for wastewater treatment or for stormwater retention. Remediation sites under the control of Board must be included as an exclusion.	The Procedures were not revised in response to this comment. In most cases, it is not expected that active remediation sites would qualify as a wetland under the Procedures' wetland definition in section II due to the lack of recurrent or continuous hydrology under normal circumstances or the size of the feature. Also note that the Procedures were revised to state that "All artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in [section II] 2, 3.a, 3.b, or 3.c are not waters of the state."
8.47	Clarify that the exclusion for active surface mining covers reclamation activities: The Coalition supports the exclusion in the framework for artificial features that develop in areas subject to active surface mining. However, adding a definition for "active surface mining" will provide clarity and ensure that sites undergoing reclamation as required by the California Surface Mining and Reclamation Act of 1975 (SMARA) are covered by the exclusion as well as sites where extraction of resources is underway.	The Procedures have been revised in response to this comment. Active surface mining is defined in section V to mean "operations that, in accordance with division 2, chapter 9 of the Surface Mining and Reclamation Act of 1975, have an approved reclamation plan, and for which reclamation has not been certified as complete by the local lead agency with the concurrence of the Department of Conservation."

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8.48	Add exclusions for multi-benefit projects: Section II.4.d of the Procedures also should exclude from WOTS all artificial (i.e., constructed) multi-benefit water quality treatment and supply facilities. These features provide water conveyance, storage and/or treatment functions while utilizing or providing wetland or riparian habitat and related environmental benefits. Currently, Section II.4.d of the Procedures excludes features used for stormwater detention, infiltration or treatment, but does not address features used for water conveyance or storage. In addition, the current version of Section II would "recapture" as wetland WOTS any artificial feature that has become a "relatively permanent part of the natural landscape." As stated above, this provision is vague and overbroad and should be deleted. In the present context, it could be interpreted to apply to many constructed features that are managed for multiple benefits, precisely because they provide "natural" functions and services such as wetland and/or riparian habitat or habitat to sensitive species.	See general response #2.

Comment Number	Comment	Response
8.49	Municipalities, water districts, water agencies, and other public and private entities that successfully manage artificial features to provide additional benefits beyond their important role as infrastructure should not be penalized for doing so. As water agency representatives testified at the State Board's September 6, 2017 hearing, subjecting constructed multi-benefit facilities to regulation as WOTS would increase costs and delay construction, operation and maintenance of these facilities. It would be inconsistent with state water supply and water quality policies that encourage use of multi- benefit treatment facilities that integrate natural wetland based treatment processes, including the State Board's Storm Water Strategy (January 6, 2016) and the California Department of Water Resources' Urban Stormwater Runoff Management Strategy (July 29, 2016), and with the California Water Action Plan, which calls for an "all of the above" approach to water management.	See general response #2.
8.50	As explained below, these multi-benefit facilities also should be excluded from WOTS for purposes of the Procedures to the extent they are deemed non-wetland features. For both wetland and non-wetland facilities, if the State Board does not revise the jurisdictional framework to exclude these facilities as WOTS, it is essential to include an exclusion for operation and maintenance of such facilities in Section IV.D of the Procedures.	See general responses #2 and #12.

Comment Number	Comment	Response
8.51	Add exclusion for other water supply facilities: The Procedures as drafted contain no exemption for water supply facilities, including groundwater recharge ponds and conveyance facilities. Recharge ponds inundated through regular operations require maintenance that would be burdened by implementation of the Procedures, which provides obstacles to meeting the Sustainable Groundwater Management Act's (SGMA) groundwater sub-basin objectives. Raw water conveyance systems of all sizes tend to have operational inefficiencies. The long-term leaks have created areas that may meet the State Wetland Definition of wetlands and could be found to be waters of the state unless such features are excluded. In response to the recent drought and encouraged by directives from the State Board, projects to "tighten up" the system and reduce leaks are in various stages of planning. Undertaking these projects to reduce leaks would be delayed and would be more costly due to additional application requirements mitigation if the areas are deemed to be WOTS subject to the Procedures. These features must be excluded from the definition of WOTS.	See general responses #2 and #12. Artificial wetlands created for the purposes of maximizing groundwater recharge have been added to the list of features that are excluded as a water of the state. However, this would not include wetlands that have incidental groundwater recharge benefits. If the area relies on artificial hydrology, it is not expected that the area would qualify as a wetland under the Procedures' wetland definition in section II due to the lack of recurrent or continuous hydrology under normal circumstances.

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8.52	Clearly define the scope of non-wetland waters subject to the Procedures and how to delineate them: The current draft Procedures state that the Procedures apply to all wetland and nonwetland WOTS. But, while the Procedures include a wetland definition and delineation guidance, and exempt certain wetland features from the Procedures, they contain no analogous provisions dealing with non-wetland waters. They do not identify any specific non-wetland features subject to the Procedures or define any exemptions for non-wetland waters — consistent with federal law or otherwise — and they do not include any guidance for identifying the limits of non-wetland WOTS. These omissions demonstrate that the State Board staff have not given adequate consideration to the regulation of non-wetland WOTS to justify such a sweeping expansion of the Procedures beyond the State Board's original focus on wetlands. Indeed, in Resolution 2008-0026, the State Board directed staff to "establish a Policy to protect wetlands from dredge and fill activities" as the first phase of a three-phased policy; non-wetland waters were not included in that first state. The Procedures, in applying to non-wetland WOTS, go beyond what staff was originally directed to do.	See general response #11.

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8.53	Identify non-wetland features that are not considered WOTS for purposes of the Procedures: If the State Board nevertheless decides to apply the Procedures to non- wetland waters of the state, the Procedures must include a list of non-wetland features that the State Board intends to regulate as WOTS similar to the jurisdictional framework for wetlands in Section II of the Procedures. The list should exclude those non-wetland features that are not considered waters of the U.S. under Corps regulations and guidance, including ornamental waters, artificial lakes and ponds (including golf course ponds), treatment ponds and other waste treatment systems, certain ditches, water-filled depressions from construction and mining, etc. See Section II.A.3.a, above. Likewise, the list should exclude industrial and agricultural containment features, facilities that are regulated under existing Water Board Orders, and constructed multi-benefit facilities for water supply or water quality treatment, to the extent these are deemed non-wetland features. See Section II.A.3.d-e, above. As explained in footnote 6, the list should also exclude lakes and ponds created as part of a commercial enterprise for recreational use or as a visual amenity.	See general responses #2 and #11.

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8.54	The need to identify non-wetland features that are, and are not, subject to regulation under the Procedures is particularly acute given the lack of any statutory or regulatory definition of WOTS and the Regional Boards' extremely broad, yet inconsistent, views, of what features qualify as WOTS. Coalition members have experienced Regional Board staff taking the position that tire ruts, puddles, erosion rills, depressional areas created by livestock or wildlife, and walking or vehicle paths created in uplands; drainage swales without a presence of wetlands or ordinary high water mark, ditches constructed in uplands, ornamental ponds and lakes constructed in uplands, industrial waste treatment ponds (lined or unlined), upland floodplains, and similar features are WOTS subject to regulation. Regardless of whether these features meet the broad statutory definition of WOTS, they should not be regulated under the Procedures. Establishing clear limits on the application of the Procedures to non-wetland WOTS will avoid absurd results, limit the uncertainty of case-by-case determinations and the potential for inconsistency among regions, and help set reasonable bounds on staff discretion.	See general responses #2 and #11.

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8.55	Equally critical, the Procedures should adopt guidance for identifying the limits of nonwetland waters that is consistent with federal guidance and practice under the Corps' Section 404 permitting program. This means, for example, that the lateral limits of non-wetland, non-tidal features such as streams and lakes are defined by the ordinary high water mark or high tide line, as defined in the Corps' regulations. See 33 C.F.R. § 328.4(c) (2012) (limits of jurisdiction); 33 C.F.R. § 328.3(e) (2012) (defining "ordinary high water mark"). The Procedures should include the most recent manuals that are available from the Corps on determination of OHWM: US Army Corps of Engineers. 2008. A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States. ERDC/CRREL TR-08-12.; US Army Corps of Engineers. 2014. A guide to Ordinary High Water Mark (OHWM) Delineation for Non-Perennial Streams in the Western Mountains, Valley, and Coastal Region of the United States. ERDC/CREEL TR-14-13. Regulatory Guidance Letter 05-05. Ordinary High Water Mark Identification.	The Procedures have not been revised in response to this comment. See general response #11.

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	December 7, 2005. With this additional guidance, applicants and the Water Boards will have clear procedures on how boundaries will be determined when vegetation is not present. Otherwise, there could be considerable inconsistencies between the Water Boards and there will be conflict between Corps permit processing and that of the Water Boards. Recent experience with state regulators has shown that adopting clear guidance on this issue is essential. For example, field staff at the California Department of Fish and Wildlife recently have begun to assert that the Department's jurisdiction under the lake and streambed alteration program may, on a case-by-case basis, extend beyond the "bed, channel, or bank" of streams and lakes, as provided in Fish and Game Code section 1602, to include adjacent wetlands, upland floodplains, and even entire upland valleys. The unpredictable, ad hoc nature of these claims, which vary from region to region and from project to project, has caused major delay, expense and uncertainty for landowners, leading to conflict between the regulated community and the Department, the possibility of litigation, and efforts to amend state law to clarify the Department's authority. This experience perfectly illustrates the dangers of failing to define the scope of the Regional Boards' jurisdiction under the Procedures. If the State Board does not address these issues before adopting the Procedures, application of the Procedures to non-wetland WOTS must be postponed until the State Board has considered	

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	the issues and amended the Procedures, or adopted regulations, to clarify the intended scope of this new regulatory program for non-wetland waters.	
8.56	However, the prior converted cropland exclusion requires revision to be consistent with federal law and include crops that do not require regular tilling of the soil. In addition, the exclusion for maintenance of storm water facilities covers only those facilities already regulated under another water board order, and must be extended to all constructed, multi-benefit water quality and water supply facilities. Finally, the Procedures should explicitly exclude from the Procedures all activities authorized under a streambed alteration agreements issued by the California Department of Fish and Wildlife or under a general order.	See general responses #2, #3, and #10.
8.57	As noted above, prior converted cropland are excluded from federal jurisdiction, and the Coalition urges the State Board to similarly exclude prior converted cropland from wetland and non-wetland WOTS subject to regulation under the Procedures. In the alternative, the Coalition believes the exclusion in Section IV.D.2.a needs to be made consistent with the federal exemption. While this appears to have been the intent, the Procedures include conditions and definitions for this exclusion that would deny the exclusion to certain types of cropland that are eligible for the exclusion under federal law.	See general response #3.

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8.58	Under the Procedures, a wetland area must have been certified as prior converted cropland by the Natural Resources Conservation Service in order to be excluded from the Procedures. However, the Procedures state that the exclusion will no longer apply if the prior converted cropland is (i) changed to non-agricultural use or (ii) is "abandoned" — i.e., is not planted with an agricultural commodity for more than five consecutive years and wetland characteristics return. The Procedures further define "agricultural commodity" as "any crop planted and produced by annual tilling of the soil…." The "abandonment" provision would deny application of the prior converted cropland exclusion to cropland that is not tilled annually, such as vineyards and orchards. These croplands would be deemed "abandoned" five years after conversion to vineyard or orchard use. There is no policy reason, and no stated rationale, for denying these croplands the exclusion, and doing so is inconsistent with federal practice. The concept of abandonment is not found in the 2005 joint guidance issued by the Corps and the Natural Resources Conservation Service, which the Procedures refer to. In addition, the Procedures' definition of "agricultural commodity" is identical to that used in the 2005 joint guidance, but the guidance does not use the term in any similar way. The State Board must correct this inconsistency by revising the Procedures to state that prior converted cropland will be deemed abandoned if it is not "planted to an agricultural crop for more than five	See general response #3.

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	consecutive years…" and by deleting the definition of agricultural commodity, which is not needed. The term "planted" must include cropping, management, or maintenance activitie related to agricultural productions, per RG 90-07.	
8.59	The Procedures contain a limited exclusion for discharges "associated with routine maintenance of storm water facilities regulated under another Water Board order, such as sedimentation/storm water detention basins." While this exclusion is good policy, it should be extended to routine operations and maintenance of any constructed, multi-benefit water supply or water quality facilities and to other water supply facilities, for the reasons explained in Sections II.A.3.g and h of these comments, to the extent such facilities are not excluded from the framework of features that are regulated as wetland and non-wetland WOTS under the Procedures.	See general response #2 and #12.

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8.60	The California Fish and Game Code authorizes the California Department of Fish and Wildlife to regulate activities affecting the bed, channel or bank of any river, stream or lake by issuing streambed alteration agreements. Cal. Fish and Game Code § 1602(a). The Department interprets its jurisdiction broadly, as discussed above, and conditions such agreements to protect water quality, fish and wildlife resources, and other aquatic functions and resources. While the Fish and Game Code does not authorize the Department to regulate wetlands and certain other features that would be subject to the Procedures, there is no need for the Procedures to duplicate the regulation of non-wetland features that are subject to the Department's authority. Section IV.D of the Procedures should include an exclusion for any discharge to WOTS authorized by a streambed alteration agreement. In the event that an activity obtains a streambed alteration agreement but also involves a discharge to WOTS that are not covered by the agreement, the Procedures should apply only to that discharge.	See general response #10.

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8.61	Section IV.C of the Procedures addresses the issuance of general orders and states that "[a]pplicants applying to enroll under a general order shall follow the instructions specified in the general order for obtaining coverage." We understand the intent is not to require applicants seeking coverage under a general permit for dredge or fill discharges to comply with the Procedures. Additional text must be added to Section IV.C of the Procedures and to the exclusions in Section IV.D to remove any uncertainty regarding the potential application of the Procedures for activities seeking to enroll under a general order.	The Procedures have been revised to specify that the requirements set forth in sections IV.A and IV.B apply to only application submittals for individual orders. Additionally, the language in section IV.C has been revised to state that discharges regulated under a general order are not subject to the requirements set forth in sections IV.A and IV.B.
8.62	The "tiers" in the current draft of the Procedures do not reduce the burdens created by the alternative analysis requirement because the thresholds are so low that even small projects are likely to trigger a full alternatives analysis. Coalition members and their constituents can attest that preparation of an alternative analysis is no small task and often requires applicants to work with biologists, engineers, economists, and attorneys to identify, design, and evaluate a range of on- and off-site alternatives.	See general response #1. The Procedures recognize that the level of effort required for alternative analyses should be commensurate with the type and amount of impact, and allow for simple analysis that may consist of as little as documenting how impacts have been avoided and minimized.

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8.63	Under the Procedures, a full alternatives analysis could be required for projects that qualify for NWPs, effectively undermining the Corps' streamlined permitting process. As described above, the FOIA data from the Corps indicates that, on average, over 200 projects each year would be required to prepare an alternatives analysis— just for purposes of Water Board review. As any impacts to specified habitats move a project into Tier 3 the number of projects would likely be higher.	See general response #1.
8.64	All discharges subject to streamlined permitting procedures under Corps-issued general permits must be exempt from the alternatives analysis requirement of the Procedures. This includes not just those projects that qualify for NWPs that have been certified in advance. Section A.1(g)(i) of the Procedures (exempting a project from the alternatives analysis requirement) should apply to all discharges that meet the terms and conditions of one or more Corps General Permits, not just (i) those that include discharges to waters of the state outside federal jurisdiction or (ii) those certified by the Water Board. Certification of the general permit is not a necessary precondition here because the Procedures will ensure that the individual discharge complies with water quality standards, which is what certification ensures. At a minimum, quantity thresholds in the Tiers should be aligned with limits in NWPs — generally 0.5 acre and 300 linear feet, which is consistent with the State Board staff's goal to align the Procedures with federal requirements.	See general response #1.

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8.65	The exemption for Watershed Plans must be revised to remove the requirement that plans include provisions for monitoring and mitigation, as these features have no bearing on avoidance and minimizations of impacts, which is the purpose of an alternatives analysis.	The Procedures were not revised in response to this comment. The purpose of the exemption is to incentivize watershed scale planning, where such planning would consider potential projects in the context of the watershed as a whole, identify priority resources where impact avoidance is critical, and plan for mitigation where impacts may be appropriate. In light of such a planning effort, the need for project specific alternatives analysis is reduced such that an exemption is warranted. However, it is critical that such plans including monitoring to ensure that the plan is successful. Thus the exemption is limited to only those plans where mitigation and monitoring is explicitly included.
8.66	Operation and maintenance of existing publicly owned infrastructure must be included in the list of activities exempt from alternatives analysis requirement. The rationale for the exemption is similar to the justification to exempt “Ecological Restoration and Enhancement Projects.” Water quality and beneficial uses in WOTS will be adversely impacted if the infrastructure does not perform its function. For example, flooding of urban or agricultural areas due to inadequately functioning flood protection facilities will likely result	See general response #1.

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	in contaminated water and detritus making their way back to waters of the state. Similar impacts can result in blocked outfalls or failed water or sewer lines. Failed bridges or roadways will typically result in the deposition of vehicles and detritus depositing into WOTS. In short, the state's water quality and beneficial use objectives are not served if infrastructure is not operated and maintained as designed.	
8.67	To the extent that the Procedures are not revised to exclude certain features as WOTS (Sections II.A.3 and II.B.1, above) or to exempt certain areas or activities from regulation (Section II.C, above), those features or activities must be exempt from the alternatives analysis to avoid unnecessary cost and delay with little or no environmental benefit.	See general response #1.
8.68	We also recommend that the quantity limits for activities that qualify for Tier 2 should be removed so that projects of any size that cannot be located in alternate locations require only onsite alternatives (unless they meet the Tier 1 size requirements).	The Procedures were not revised in response to this comment. The Procedures already state that any project that cannot be located at an alternate location falls within Tier 2 requiring an analysis on on-site alternatives, unless the project meets the size requirements set forth in Tier 1.
8.69	As noted above, the Coalition is concerned about the potential for conflicting LEDPA determinations by the Corps and Water Boards. This concern is heightened by the potential for conflicting wetland determinations and the presumptions that those determinations would trigger. The Coalition supports the inclusion of deferral provisions in Section	See general responses #1 and #4.

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	IV.B.3.b of the current draft of the Procedures, particularly the requirement that concerns about the adequacy of an alternatives analysis must be expressed in writing by the Executive Officer or Executive Director to the Corps. However, it does not go far enough. For example, Water Boards should not be able to second guess Corps alternatives analyses if they did not participate in the process at the time the Corps is conducting its analysis. Section IV.B.3.b.1 should be written to say that Water Boards will defer to the Corps unless the Corps actively denies the Water Boards' participation. The current language — "not provided an adequate opportunity to collaborate" — gives the Water Boards the discretion to question the Corps alternatives analyses based on subjective determinations of communications with the Corps.	
8.70	Further, the process for coordination between the Corps and Water Boards is still undefined. In stakeholder meetings, staff have discussed entering into an MOU with the Corps. The Coalition thinks an MOU is necessary to ensure coordination between the agencies and avoid potential conflict, such as those described above in Section I.B. We strongly believe the MOU should set forth a clear process for coordination, with deadlines and consequences for failing to meet those deadlines similar to those set forth in the Permit Streamlining Act. If as staff have declared, there will be no additional burden on the Water Boards from the Procedures, there should be no concern with establishing mandatory	The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures. In response to the request to defer to Corps' LEDPA determinations on an alternatives analysis, the Procedures already require that Water Board staff defer to the Corps in cases in which the Corps requires an alternatives analysis, unless the Water Boards were not provided an opportunity to consult during the development of an alternatives analysis, the alternatives analysis does not adequately address issues raised during consultation, or the proposed alternatives do not during consultation, or

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	deadlines and consequences for failing to meet those deadlines. Deferral to the Corps' LEDPA determination until the MOU is in effect is necessary to reduce the potential for conflict.	the proposed alternatives do not comply with water quality standards. Deference to the Corps is intended to reduce duplication of requirements from both agencies, not create regulatory conflicts. An applicant will be expected to submit materials that are submitted to the Corps when the Corps requires an alternatives analysis for a complete application. Applicants are encouraged to engage the Water Boards before the application process to ensure that a proposed alternative does not violate state water quality standards.
8.71	The Procedures call for deference to the Corps' alternatives analysis, at least in certain circumstances, but they do not similarly require deferral to the Corps' mitigation requirements. The Procedures must defer to the Corps' mitigation requirements. This is a concern because the Water Boards currently have mitigation preferences that may conflict with the Corps' preferences — e.g., the Boards prefer in-watershed mitigation while the Corps prefers mitigation banks and in-lieu fee programs whose service areas may not correspond to watershed boundaries used by the Water Boards. It also presents the opportunity for the Water Boards to require different or additional mitigation for impacts, which could happen if the Corps and Water Board classify the type of impacted aquatic resources differently because of the different wetland definitions. The potential for	In regards to alternatives analysis requirements, see general response #1. In regards to compensatory mitigation requirements, see general response #8. Consistent with the Corps 404(b)(1) Guidelines, and stated in section 230.93(b) of the State Supplemental Guidelines, the permitting authority shall approve compensatory mitigation strategies based on what is environmentally preferable with a soft preference to mitigation banks, in-lieu fee programs, and finally, permittee responsible compensatory mitigation. This soft preference requires Water Board staff to take into consideration the best environmental outcome to compensate for the adverse impacts, whether it is through mitigation banks, in-lieu fee programs, or permittee-responsible mitigation.

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	conflicting determinations and the consequences were highlighted above in Section I.B. The Procedures should require Water Boards to defer to the Corps' determinations as to the type, location, amount and term of mitigation for all impacts to waters of the United States and should not require duplicate financial securities if one has been provided to other agencies.	In regards to concern surrounding different regulatory outcomes due to the technical wetland definition, see general response #4. In addition, a financial security is an optional requirement, and is not mandatory in all cases. Financial securities may be necessary to provide that there are sufficient funds to correct or replace unsuccessful mitigation if the responsible party fails to do so. A financial security may not be necessary where there is a high level of confidence that mitigation will be provided and maintained. If a financial security provided to another agency provides suitable assurance that sufficient funds are available to satisfy the compensatory mitigation requirements, the permitting authority may rely on those assurances, but such reliance is not appropriate in all cases.
8.72	The Procedures generally incorporate the federal Mitigation Rule, 73 Fed.Reg. 19594 (Apr. 10, 2008), amending 33 CFR Parts 325 and 332 and 40 CFR Part 230, as part of the State Supplemental Dredge or Fill Guidelines. However, Section III.B and V of the Procedures introduce terms that are not used in the federal mitigation rule: "Project Evaluation Area" and "Watershed Profile." Both terms are problematic because they have definitions that are open to interpretation.	The Procedures have not been revised in response to this comment. In regards to "project evaluation area," when proposing compensatory mitigation to offset unavoidable impacts to waters of the state, an applicant must demonstrate that it will "contribute to the sustainability of watershed functions and the overall health of the watershed area's aquatic resources" (section IV.B.5.c). To do this, an applicant would need to define a project evaluation area large enough to show that the aquatic resource impacted by the project would be replaced through the

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	We recommend that the term “Project Evaluation Area” be deleted. It is vague and unnecessary, and the concept can be folded into the definition of “Watershed Profile.” We understand the intent of the Watershed Profile is to capture information that would generally be required under the federal Mitigation Rule (e.g., 33 CFR § 332.3(c)(3)) but may be unavailable to or unattainable by applicants. The definition of the term in Section V of the Procedures is vague and open-ended, and includes data sources that go far beyond what is required in the federal Mitigation Rule and, to the extent it seeks information on defining watershed goals, what is required to evaluate mitigation proposals. At a minimum, the definition must be revised to conform to the information listed in the federal Mitigation Rule, that flexibility be provided as to the level of detail required in a watershed profile, and that the requirement for field data within the watershed be deleted.	successful implementation of the mitigation. Thus, the size of the project evaluation area will be based on factors such as the size and types of impacts, the aquatic resource restoration type and location, and will vary greatly depending on these factors. The area included in the project evaluation area should be the same, if not similar, to the area of study used to conduct project review under CEQA. Best professional judgment should be applied. In regards to “watershed profile,” the applicant characterizes the abundance, diversity and condition of aquatic resources, termed a “watershed profile”, in the project evaluation area to assess project impacts and potential compensatory mitigation sites. However, the Procedures allow that “the scope and detail of the watershed profile shall be commensurate with the magnitude of impacts associated with the project” (see Section V Definitions). Thus, the level of specificity for condition assessments is determined by the nature of the impacts. In general, this ranges from field sampling using a rapid assessment method, such as the California Rapid Assessment Method in the case of impacts with significant effects, to using best professional judgement combined with available resource information for impacts with minimal effects.

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		As further stated in definition of watershed profile noted above, sources of information for a watershed profile include “online searches, maps, watershed plans, and possibly some fieldwork if necessary.” In addition, the definition of a watershed profile is mirrored information needs of the Corps to allow for a consistent application of the watershed approach.
8.73	Additionally, the Procedures provide different “strategies” for determining the amount of mitigation required, with a lesser amount required for mitigation that is to be performed pursuant to a Watershed Plan. The Coalition understands that the intent of this “preference” is to encourage the creation of Watershed Plan, but we remain deeply concerned that this provision will instead be used to justify ratcheting up the amount of mitigation required for mitigation plans that are not prepared pursuant to a Watershed Plan. This is particularly troubling because there are currently no Board approved Watershed Plans that meet the criteria set for in the Procedures. Accordingly, this preference and the different mitigation strategies must be deleted. If they are retained, it must be revised so that it does not become effective unless and until there is an approved Watershed Plan for the area where the project is located.	The Procedures have not been revised in response to this comment. The rationale for watershed plans is provided in section IV.B.5.c of the Procedures. In general, the required amount of compensatory mitigation is based on a number of factors such as temporal loss, functional loss, restoration difficulty, distance from the impact site, and risk and uncertainty of success. As stated in the Procedures, if a compensatory mitigation plan complies with an approved watershed plan, then the level of certainty that the project will meet its performance measures increases. In light of the lowered risk and uncertainty, generally a lesser amount of compensatory mitigation is appropriate. This provision was included in the Procedures to incentivize applicants to consider watershed plans during the project planning stage. Watershed plans should help to provide useful information, such as an inventory of aquatic resources in the project evaluation area, and help identify watershed needs, including potential compensatory mitigation sites.

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		In all cases, the Water Boards must require, at a minimum, a compensatory mitigation ratio of one-to- one; however, many factors go into determining the appropriate ratio for compensatory mitigation, including mitigation site location, net loss of aquatic resource surface area, type conversion, risk and uncertainty, and temporal loss which commonly results in a higher ratio than the baseline one-to-one (see section 6 of the Staff Report for more information). In addition, the Water Boards will not approve the use of any watershed plans until the Procedures are adopted and, as stated, the potential reduction in compensatory mitigation may not be applied unless there is a watershed plan approved for use by the Water Board.
8.74	The Procedures continue to require information on a case-by-case basis for applications. This creates many problems, as outlined in the Coalition's comments from last year. The requirement for information on climate change illustrates the problems with the case-by-case approach. It is unclear what the Water Boards' authority or purpose for the climate change requirement is, and the case-by-case nature of the requirement will provide an excuse to deem applications incomplete and lead to uncertainty, delay and frustration. It also undermines the goal of having uniform program requirements. The requirement is also problematic because it is open- ended,	See general response #7.

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	and the breadth of this requirements was highlighted in Response to Comment No. 1.8, in which staff identified analyzing future sea level rise, variable climate, storm intensity, dry periods, flood risks, drought, and increased vulnerability to invasive species as appropriate actions related to this requirement. Such an analysis would be burdensome and speculative. CEQA documents already deal with such factors, and therefore, the Procedures would be duplicative and unnecessary. For these reasons, the Procedures should be revised to eliminate the reference to information regarding climate change. At a minimum, the Board should include a reasonableness standard on the potential impacts to make the requirement less open-ended.	
8.75 (a)	The Procedures also allow too much discretion and uncertainty in determining when an application is complete. The application requirements should specify that, if the applicant requests a pre-application meeting, the permitting authority must meet within 30 days of receiving the request. The purpose of the meeting would be to review the jurisdictional status of the aquatic features within the project area, evaluate application materials to be required, consider potential avoidance and minimization measures and, if necessary, alternatives to be examined, and provide feedback on mitigation proposals. Any materials in Section IV.A.2 (Additional Items Required for a Complete Application) of the Procedures that is not identified by the permitting authority in the pre-application	Language in the Procedures states that applicants may consult with the Water Boards early in the application process. Pre-application meetings or informal consultation with the Water Boards benefit the applicant by providing useful information which could prevent delays during application review. For complex projects, this should be done ideally during the early planning stage of the project. As to agency coordination, the Water Boards are committed to increasing interagency coordination in order to streamline application review for all parties involved and expect to try and reach agreements with other agencies that facilitate coordination. However, the Water Boards cannot mandate a pre-application process that must be followed by other agencies and any effort to reach interagency

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	meeting or in writing within 30 days thereafter will not be required for a complete application. If the permitting authority does not meet with the applicant, materials listed in Section IV.A.2 should not be required to complete the application. If the applicant does not request pre-application meeting, any materials in Section IV.A.2 not requested by the permitting authority within 30 days of receipt of the required application materials listed in Section IV.A.1 should be deemed waived. Again, if there will be no additional burden on the Water Boards from the Procedures as staff have stated, these necessary timing requirements should be no concern and will support the State Board's stated goal of creating an efficient program that will not overly burden or delay critical projects.	agreements should be pursued after the Procedures are adopted. Applicants should keep Water Board staff informed of all scheduled agency reviews and pre-application site visits so that staff may participate and provide applicants with any information that may assist in preventing delays later. For example, applicants should notify the Water Boards if the Corps is reviewing their project during the Corps' regularly scheduled "pre-application" meetings, which may be attended by Water Board staff.
8.75 (b)	See Procedures, Lines 504-511. This will place a new requirement on local agencies to develop watershed plans to be evaluated in CEQA documents when few such plans exist. The explanation about watershed plans is unclear in the policy-even as to the size of watersheds to be evaluated and how the approval process will be completed.	The use of a watershed plan is not a requirement in the Procedures but rather an incentive for applicants to apply the watershed approach through the use of watershed plans when planning projects that will impact waters of the state. There are existing plans such as habitat conservation plans (HCPs), natural community conservation plans (NCCPs), and special area management plans (SAMPs) that may meet the definition of a watershed plan and may be submitted to the Water Boards for approval to use as a watershed plan, but the Water Boards will not

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		approve any watershed plans until the Procedures are adopted. Watershed plans are developed for a number of different size watersheds and for different purposes; therefore, the Water Boards have not predefined a hydrologic unit that would be appropriate for use with the Procedures. Rather, the Procedures defines the information that would be needed in the watershed plan for it to be approved, which can be found in the definition of a watershed plan (section V).
8.76	In the early 2000s, the State Board requested Regional Boards to develop Watershed Management Plans All of these reports were prepared between 2004 and 2007 (one remains a draft). It does not appear that any of them would be compliant with the requirements contained in the Procedures. These reports varied in how the watersheds were described, the number and size of the watersheds that were evaluated, and what findings were reached in relationship to wetlands. Most did not identify specific wetland types nor establish priority sites for aquatic resources restoration or protection. To our knowledge, entirely new plans are anticipated under the Procedures, but with no plan or funding identified to prepare such Plans. The Procedures should reference who is responsible for these plans and how they will be funded and developed. Otherwise, applicants will be penalized (in terms of increased mitigation) for the	The Water Board's 1997 and 2001 Strategic Plans included a key component outlining an approach for watershed management. In the future, it may be appropriate for the Water Boards to revise efforts already made on watershed management and make them amenable to the goals outlined in the Procedures; however, the Water Boards are not proposing to do so at this time. New watershed plans are not required through the Procedures, therefore work plans and funding sources need not be identified. In addition, applicants will not be penalized for not planning a project in accordance with a Water Board approved watershed plan. Also see response to comments #8.73 and #8.75 (b).

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	failure of government to prepare and implement these plans. Far more specifics will be necessary to provide consistency in preparation of these Watershed Plans so that applicants will have a fair chance in understanding how their project can be mitigated in the context of the policy.	
8.77	State Board staff have said that many of the problems identified in public comments will be resolved through an MOU with the Corps. We question whether an MOU will in fact be finalized and, if so, whether it will legally be capable of resolving the issues addressed in the public comments. The Corps submitted comments on the prior proposal declaring the State Board did not have the legal authority to take its proposed action and it infringed on the Corps area of expertise and authority. The concerns expressed by the Corps remain with the current proposal. Have State Board staff received a commitment from the Corps Pacific Division or Corps Headquarters to enter into an MOU with the State Board? If yes, who made that commitment on behalf of the Corps and how was that commitment memorialized? If no, why does State Board staff think the Corps will enter into an MOU with the state on a proposal the Corps says exceeds the state's authority and infringes on its federal program?	The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures. The State Water Board has conferred with the Corps regarding the scope and content of the Procedures in order to achieve consistency with the Corps' practices, where possible. See general response #9.

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8.78	If the State Board does proceed with adopting the Procedures, we think the adoption of an MOU is not optional, but required. Phase-in of the Procedures must be delayed until an MOU is negotiated and adopted and appropriate training for applying the MOU is provided to Water Board staff and guidance about the Procedures and MOU is made available to the regulated community.	See response to comment #8.77 (above).
8.79	Any acceptable MOU must provide a framework for harmonizing the state and federal permitting processes and resolving conflicts. Further, given the critical function any MOU will play, the State Board must phase in implementation of the Procedures so that the provisions with greatest potential to conflict with the Corps' permitting program become effective only after the State Board has entered into an MOU with the Corps.	It would not be practical to implement the regulations in smaller, incremental steps, as it would entail years of continuous regulatory change for both the Water Boards and the regulated community, likely leading to increased uncertainty and delays. The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures. However, while the Procedures have been in development since 2008 and there has been extensive outreach to communicate with stakeholders during this process, the State Water Board recognizes that once the final Procedures are adopted, it would be reasonable to allow time for applicants to come into compliance and become familiar with the Procedures. Therefore, the Procedures will not be effective until nine months after approval by the Office of Administrative Law.
8.80	Water Board staff must be required to defer to the Corps' alternatives analysis in all cases involving waters of the United States until an MOU is signed.	See General Response to comment #1

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8.81	The MOU must include specific procedures and deadlines, at a minimum. If Board staff fail to satisfy the procedures and time limits in the MOU, they may not require a revised or additional alternatives analysis under the Procedures for any discharge to waters of the United States.	Comment noted. The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures.
8.82	The MOU must also address a process for pre-application meetings, which both agencies should attend. Water Board staff must provide direction to the applicant within 30 days following pre-application meeting regarding the contents necessary for a complete application. Water Board staff to comment within 30 days after receiving information from the Corps about the selection and valuation of alternatives under the 404(b)(1) Guidelines. The MOU should define the process and timing for the Corps to provide a draft alternatives analysis to Water Board staff so that staff may rely on it as provided in Section IV.B.3.b of the Procedures and should define dispute resolution procedures to be used when Water Board staff disagree with the results of the Corps' alternatives analysis or feel they lacked adequate opportunity to collaborate. Again, establishing mandatory timing requirements for Water Board decision making should not be a concern if there will be no additional burden on the Water Boards as staff have told the State Board and it will provide some certainty to applicants that their projects will not indefinitely be tied up in deliberation between the Corps and the Water Boards.	Comment noted. The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures.

Letter 9: Butler, Samuel

Comment Number	Comment	Response
9.1	I would like to express my wholehearted support for the preservation of California's wetlands and prohibition of development on these areas.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.
9.2	Protecting and restoring California's wetlands should be a priority	Comment noted.

Letter 10: California Construction and Industrial Materials Association

Comment Number	Comment	Response
10.1	However, the language of this section has led some to wonder whether artificial wetlands less than one acre are regulated despite the exclusion for Active Surface Mining. We would appreciate clarity that, consistent with our discussions with Board staff, all artificial wetlands "constructed" and "currently used and maintained primarily for" an "active surface mining" operation, regardless of size, are excluded from the definition of "wetlands." That is, what is really being regulated by the language in this section is artificial wetlands greater than one acre unless they meet one of the exclusions. By default, artificial wetlands less than one acre are not included unless they met one of the above definitions.	Section II of the Procedures was revised to clarify that "[a]ll artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in 2, 3.a, 3.b, or 3.c are not waters of the state." See also general response #2.

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10.2	To provide additional clarity for both regulators and stakeholders, we also suggest that a definition of "active surface mining" be included to clarify what mining operations are and are not included. We particularly want to ensure that the definition include only lawfully operating mines. Accordingly, we suggest that an "active surface mining" operation be defined as any surface mining operation with a reclamation plan approved by a local lead agency or the State Mining and Geology Board, which operation has not yet been certified as having completed the reclamation process (an exact definition is proposed below). Accordingly, we propose the following definition of "active surface mining": Active surface mining: Surface mining operations which, in accordance with Division 2, Chapter 9 of the Surface Mining and Reclamation Act of 1975, have an approved reclamation plan, and for which reclamation has not been certified as complete by the local lead agency with the concurrence of the Department of Conservation.	The Procedures have been revised in response to this comment. Active surface mining is defined in section V to mean "operations that, in accordance with division 2, chapter 9 of the Surface Mining and Reclamation Act of 1975, have an approved reclamation plan, and for which reclamation has not been certified as complete by the local lead agency with the concurrence of the Department of Conservation."

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10.3	As a final point, we note that many active surface mining operations have been active within the State for many decades, and in some instances, for over a century. The Procedures' definition of wetlands as those that resulted from historic human activity in Section 4(c) is particularly concerning, as that provision appears capable of superseding the active surface mining exclusion for such facilities. We support the Coalition's proposed deletion of this historic human activity language to ensure that longstanding active mining operations qualify for the active surface mining exclusion.	See general response #2.
10.4	The Board's efforts to create collaboration and cooperation for the division of permitting authority between the U.S. Army Corps of Engineers ("Corps") and the Regional Water Quality Control Boards is admirable. Staff has presented that a primary goal of the current Board regulatory effort is to maintain alignment with federal procedures, wherever possible. However, as the Board is aware, the state has no direct authority over the federal government, and this results in undo procedural and economic burden on the regulated community by forcing them to seek approvals and concurrences from	See general responses #1 and #9.

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	different state and federal entities, often for the same or similar activities or issues. Particularly problematic is the Procedures' grant of authority to permitting authorities to reject the federal Least Environmentally Damaging Practicable Alternative ("LEDPA"), utilizing language that is vague and subjective.	
10.5	The Coalition has proposed language on page 12 of their strikeout comments concerning the alternatives analysis review requirements for cases where there are also discharges to Waters of the U.S. These additions on strikeouts on lines 389-401 would create a process that provides certainty to the regulated community and ensures that the permitting authority has the opportunity to participate in the alternatives analysis. The Coalition's clear language also gives project proponents a clear step they can take to ensure that their project's LEDPA can pass the first threshold of participation, while enabling the Board to not mandate any action by the permitting agency.	See general response #1.

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10.6	The Procedures continue to require information (on a case-by-case basis) on potential impacts associated with climate change. Specifically, on page 7, "If required by the permitting authority on a case-by-case basis, an assessment of the potential impacts associated with climate change related to the proposed project and any proposed compensatory mitigation, and any measures to avoid or minimize those potential impacts." Staff has indicated in personal communication that the level of effort intended on this analysis would be any impacts reasonably foreseeable. However, in staff's written response to comments to San Diego Water Authority (Comment No.1.8), the official scope of anticipated analysis is extensive. In its response, staff identifies analyzing future sea level rise, variable climate, storm intensity, dry periods, flood risks, drought, and increased vulnerability to invasive species. As the Coalition notes in its comments, there is no clear authority for the Board to impose this requirement, and it is unworkable. In addition, it would be difficult, at best, and speculative, at worst, for a project applicant to project forward the scope of impacts and their relevance to wetland mitigation projects as defined by the staff response to San Diego Water Authority letter. At a minimum, any information and related analysis should have a "reasonably foreseeable" requirement—i.e., information related to the reasonably foreseeable potential impacts of climate change associated with a	See general response #7.

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	proposed project. Without such a limitation, this requirement is an impermissibly vague, open-ended obligation to supply information and adopt mitigation measures. It is far preferable to delete the analysis altogether.	

Letter 11: California Farm Bureau Federation

Comment Number	Comment	Response
11.1	The scope of the Procedures is overbroad relative to the needs and legal authority identified by the State Board. The Procedures go far beyond regulating discharges to wetland waters of the state that fall outside the protection of the federal Clean Water Act— they regulate all waters of the state, including all waters of the U.S. already protected under the Clean Water Act's section 404 permitting program and section 401 certification requirements, and non-wetland waters of the state already protected under the California Department of Fish and Wildlife's ("CDFW") lake and streambed alteration program.	See general responses #9 and #10.
11.2	The Procedures give the Water Boards broad power to regulate and revise activities involving dredged and fill discharges that exceeds the Water Boards' authority under the Water Code, including the authority to conduct an "alternatives analysis" for such activities.	See general response #9.

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11.3	The Procedures will also set new regulatory requirements that will affect farmers and ranchers' agricultural activities across the state — from agricultural drainage projects to smaller projects on the field necessary for the operation and production of food and fiber — who will now have to comply with a bevy of new and costly water quality regulations in addition to current regulations such as those within irrigated lands regulatory programs.	Section IV.D of the Procedures identifies areas and activities that are excluded from complying with the application submittal and review requirements set forth in sections IV.A and IV.B. This includes agriculture-related activities exempt under Clean Water Act section 404(f). However, these areas and activities are not exempt as waters of the state and could be regulated under another program such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures.
11.4	As currently drafted, the Procedures will create unnecessary conflict by proposing a new wetland definition that differs from the longstanding definition that has been used by the United States Army Corps of Engineers ("ACOE"). This definition, along with the jurisdictional framework and informational flowchart (Figure 3, Draft Staff Report, p. 66) will result in features being classified as a wetland by the Water Board but as non-wetland waters by the ACOE, leading to conflicting alternatives analysis determinations and mitigation requirements. Further, the definition's expansive scope, especially regarding the definition of "artificial wetlands," will classify numerous agricultural areas, such as spots in fields, irrigation channels, tailwater ponds, and agricultural drains and ditches, as wetlands that are waters of the state.	See general responses #2 and #4. In regards to agricultural areas, as set forth in section IV.D, and as described in the Staff Report, agricultural activities that are exempt under Clean Water Act section 404(f) are excluded from the application procedures requirements set forth in the Procedures. Examples of excluded activities include normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; and maintaining or reconstructing structures that are currently serviceable

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11.5	Although the Procedures reference federal Clean Water Act exemptions and exclusions under Section 404(f) for certain agricultural activities, the hierarchy for determining exemptions and exclusions contained within the jurisdictional framework and Figure 3 Informational Flowchart lead to the conclusion that exclusions under state regulation are difficult, if not impossible, to obtain.	As set forth in section IV.D, and as described in the Staff Report, agricultural activities that are exempt under Clean Water Act section 404(f) are excluded from the application procedures requirements set forth in the Procedures. The wetland jurisdictional framework provided in section II provides a framework for determining if a wetland is a water of the state. If a feature that meets the definition of a wetland water of the state qualifies for an exclusion outlined in section IV.D, they are excluded from the application submittal and review requirements set forth in the Procedures.
11.6	The Procedures should revise the state wetland definition and delineation procedures consistent with their federal counterparts under the ACOE's Section 404 program and harmonize exclusions from the Procedures with federal law.	See general response #4 regarding the technical wetland definition. In addition, section IV.D of the Procedures identifies areas and activities that are excluded from complying with the Procedures and are intended to be consistent with the Corps' interpretation of 404(f) exclusions.

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11.7	Because of their excessive scope, the Procedures overlap the regulatory programs of the ACOE and the CDFW. The Procedures fail to ensure the Water Boards will defer appropriately to those existing programs and implement their new authority in a way that minimizes duplicative regulation.	See general response #10.
11.8	The Procedures compound the negative effects of this overlap by including definitions and procedures that conflict with their federal counterparts, by adding unnecessary analysis for minor discharges that are subject to streamlined permitting under federal law, and by expressly allowing the Water Boards to override decisions by the ACOE. All of these individual components, whether they be duplicative or conflicting, compound to create a formula for regulatory delays and added costs.	See general responses #6 and #10.

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11.9	Many of the activities and impacts that will be regulated under the Procedures are already regulated directly or indirectly in various ways by the Water Boards through the irrigated lands regulatory program general orders, TMDL implementation plans, NPDES permits, and waste discharge requirements or conditional waivers thereof, and by other state and federal agencies including, but not limited to, the California Department of Fish and Wildlife, the Department of Forestry and Fire Protection, various local governments, and the ACOE. There is significant regulatory overlap and duplication, as well as conflict and inconsistency for those dischargers required to now also comply with the mandatory permitting program created by the Procedures.	The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures that regulate dredge or fill discharges. Instead, the procedures serve to provide a consistent statewide approach. Also see general response #10.
11.10	The State Board should carefully consider the overlap, duplication, inconsistency, conflict, and burdens imposed by the Procedures, especially to the agricultural industry, as well as to Water Board staff with limited resources.	See general responses #6 and #10.
11.11	Instead of adopting the Procedures which create a parallel regulatory process, the Water Boards should defer to the already existing and working 401 certification program and follow existing CWA requirements.	The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures that regulate dredge or fill discharges which includes the 401 certification process. The Procedures will strengthen regulatory effectiveness and improve consistency for the existing program as well as establish procedures for regulation of dredged or

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		fill discharges to all waters of the state, including those outside of federal jurisdiction.
11.12	Additionally, if the State Water Board feels that additional requirements are needed for a narrow subset of waters, particularly wetlands and special aquatic features, a program should be developed to regulate these waters rather than a mandatory permit program for all waters of the state, as proposed by the Procedures.	Establishing Procedures that are applicable to all waters of the state, both federal and non-federal, will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. Limiting the scope of the Procedures to only a subset of waters such as wetlands would complicate the regulatory landscape because there would be two different sets of procedures that would apply to projects that affect both wetland and non-wetland waters.
11.13	Farm Bureau appreciates the inclusion of exemptions and exclusions within the Procedures, especially since the Procedures contain duplicative and burdensome mandatory regulatory requirements, and add regulatory ambiguity to agricultural operations.	Comment noted.
11.14	Nevertheless, the Procedures need to be revised so that exclusions are harmonized with federal law, regulatory burdens are removed, and the process is streamlined; this is especially true regarding prior converted croplands and the normal farming activities.	In regards to prior converted croplands, see general response #3. Section IV.D. of the Procedures identifies areas and activities that are exempt from complying with these specific Procedures, including Clean Water Act section 404(f). However, agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated

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		Lands Program. The Water Boards will defer to the Corps regarding determinations that activities are exempt under section 404(f) for discharges of dredged or fill material into waters of the United States.
11.15	Although the Procedures' recognition of specific agricultural exemptions and exclusions under the federal Clean Water Act (section 404(f)) is appreciated, the application of such exemptions is unsettled and inconsistent statewide, causing uncertainly for farmers and ranchers.	The Water Boards will defer to the Corps regarding determinations that activities are exempt under section 404(f) for discharges of dredged or fill material to waters of the U.S.
11.16	The Procedures' language on how to determine the applicability of the federal Clean Water Act section 404(f) exemptions calls into question the true exclusion of certain agricultural activities from the Procedure's requirements. Specifically, the Procedures merely state that federal regulations, guidance letters, and memoranda will "be used when determining whether certain activities are excluded from these procedures." (Procedures, Section IV.D.1.a, p. 11.) This statement highlights the subjective nature of the Procedures — federal agricultural exemptions will "be used" when determining applicability, but the Water Boards are not required to defer to the federal exemptions.	The Water Boards will defer to the Corps regarding determinations that activities are exempt under section 404(f) for discharges of dredged or fill material to waters of the U.S. The language in the Procedures mandates the use of the items listed in section IV.D.1.a to interpret and implement section 404(f) exemptions in non-federal waters of the state, where there may not be a Corps determination.

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11.17	The applicability of the federal agricultural exemptions is further confounded by the jurisdictional framework and Figure 3 Informational Flowchart, which lead to the conclusion that true exclusions for agricultural activities under the Procedures are difficult, if not impossible, to obtain.	Figure 3 in the Staff Report is an informational flowchart for determining if a wetland is a water of the state. Section IV.D of the Procedures identifies areas and activities that are exempt from complying with these specific Procedures. These areas and activities are not exempt as waters of the state and could be regulated under another program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures.
11.18	To clarify that activities exempt under Clean Water Act Section 404(f) and the authorities in Table 1, Table 2, and Table 3 will be fully deferred to, Farm Bureau recommends revising the words “shall be used” in Section IV.D.1.a (Procedures, p. 11) with “shall be relied upon and deferred to” Recommended Edits: [Language change suggestions omitted]	The Procedures were not revised in response to this comment. The language has been retained as drafted because the language the commenter provided is unclear.
11.19	the language both within the Procedures and the Staff Report misstates the PCC exclusion.	See general response #3.
11.20	With regard to the first component discussing that the PCC exclusion will no longer apply if the land is changed to a non-agricultural use, this component does not reflect current law. In New Hope Power Co. v. U.S. Army Corps of Engineers (2010) 746 F.Supp.2d 1272, a sugarcane grower challenged	See general response #3.

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	The ACOE's new legislative rules ("Stockton Rules") related to prior converted croplands without allowing the required public notice period. The court found that the Stockton Rules were not mere formalities or policy statements, but were legislative rules that substantially changed the ACOE's treatment of PCC. Specifically, the Stockton Rules improperly expanded the ACOE's jurisdiction by creating a new rule that wetland exemptions for prior converted croplands are lost upon conversion to a non-agricultural use. Accordingly, the court set aside the Stockton Rules in their entirety. Given the current state of the Stockton Rules, component D.2.(a)(1) should be deleted.	
11.21	With regard to the second component discussing the abandonment of PCC, the Procedures state the PCC exclusion is lost if the land has not been planted to an agricultural commodity for more than five consecutive years. The ACOE's own guidance does not limit abandonment to simply "planting," but rather also considers management and maintained activities related to agricultural production to be proper uses of the land. (See RGL 90-07, p. 2 ¶ 5(e), available at http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl90-07.pdf [The ACOE stated that its purpose in issuing RGL 90-07 was to clarify the concept of "normal circumstances" as it related to cropped wetlands, while also addressing the abandonment of prior converted cropland. Specifically, the ACOE stated that such	See general response #3.

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	property "will be considered abandoned if for five consecutive years there has been no cropping, management or maintenance activities related to agricultural production. In this case, positive indicators of all mandatory wetlands criteria, including hydrophytic vegetation, must be observed."]3; see also 7 C.F.R. § 12.33(c) ["Abandonment is the cessation for five consecutive years of management or maintenance operations related to the use of a farmed wetland or a farmed-wetland pasture.].) Thus, Provision D.2.(a) should be revised to expand "planted" to "cropping, management or maintenance activities related to agricultural production." Additionally, a new provision, D.2.(a)(iii) should be added to state: "For the purposes of D.2(a), abandonment is the cessation for five consecutive years of management or maintenance operations related to the use of a farmed wetland or a farmed-wetland pasture and positive indicators of all mandatory wetlands criteria, including hydrophytic vegetation, must be observed.	
11.22	With regard to Section D.2(a)(i), which defines an "agricultural commodity" as used in D.2.(a), the definition severely restricts which crops can be classified as an agricultural commodity. Specifically, the definition requires "annual tiling of the soil. Not all crops require annual tiling; however, these crops are still agricultural commodities. The requirement to till soil annually should be deleted.	See general response #3.

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11.23	The State Board should correct these inconsistencies by revising the Procedures to state that prior converted cropland will be deemed abandoned if it is not "planted to an agricultural crop for more than five consecutive years…", add a sentence defining the term "planted" to include cropping, management or maintenance activities related to agricultural production, and by deleting the definition of agricultural commodity, which is not needed.	See general response #3.
11.24	Farm Bureau is concerned that the Procedures may erect significant, unintended barriers to groundwater recharge activities that our organization anticipates may become a critical part of our industry's long-term response to growing water supply constraints and the challenges of the Sustainability Groundwater Management Act. Specifically, in addition to dedicated recharge facilities, Farm Bureau anticipates that stormwater capture and winter flooding of agricultural fields may provide important, relatively inexpensive, and environmental beneficial means to better manage and recharge our state's groundwater resources. To avoid conflicts with such critically important activities and the state's groundwater sustainability and broader water management goals, the State Water Board's Procedures should create an express exclusion for such activities.	See general response #2.

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11.25	The current draft Procedures would impose substantial burdens on the people of California, particularly farmers and ranchers, that are disproportionate to the expected benefits, especially since the Procedures create a mandatory permitting program applicable to all waters of the state. Specifically, the Procedures do not provide for "the *reasonable protection* of beneficial uses" upon mandated review of specific factors including economics. (*Id*., § 13050(h), emphasis added; see also *id*., § 13000 [activities that can affect the waters of the state "shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible."] Emphasis added.)	The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California's aquatic resources. As discussed in Section 11 "Economic Considerations" of the Staff Report, many of the elements of the Procedures are the same as the federal CWA section 404(b)(1) Guidelines. As such, much of the Procedures are already applicable to projects in waters of the U.S. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California's aquatic resources. In addition, as set forth in section IV.D, and as described in the Staff Report on page 72, agricultural activities that are exempt under Clean Water Act section 404(f) are excluded from the application procedures requirements set forth in the Procedures. Examples of excluded activities include normal farming, ranching and silviculture activities; constructing and

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		maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; and maintaining or reconstructing structures that are currently serviceable. For these reasons, it is expected that the Procedures would not add regulatory ambiguity to agricultural operations, nor would the Procedures add duplicative requirements. The comment cites an excerpt from section 13050(h), which defines "water quality objectives." As the Procedures are not setting water quality objectives, this definition is not applicable.
11.26	Farmers and ranchers are heavily invested in the health and quality of their water resources. Many agricultural areas of the state are regulated under irrigated lands regulatory program orders (waste discharge requirements or conditional waivers of waste discharge requirements). These programs include extensive measures to protect water quality, manage sediment and erosion, and implement best management practices. A separate new mandatory regulatory process is unnecessary and overly burdensome as it adds yet another layer of broad oversight and regulatory over-reach instead of a targeted, well-defined set of regulatory objectives.	See response to comment #11.25 (above). In addition, the irrigated lands regulatory program addresses different activities than the Procedures. Specifically, the irrigated lands program regulates water discharges from agricultural operations in California, including irrigation runoff, flows from tile drains, and storm water runoff but does not regulate discharges of dredged or fill materials to waters of the state. Conversely, the Procedures apply to only the discharge of dredge or fill material. As noted in the response to comment #11.25, the Procedures are not applicable to all agricultural operations. Where the Procedures are applicable to agricultural operations, the actions necessary to avoid, minimize, and mitigate for impacts will likely be different than the actions required by the irrigated lands program.

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11.27	Farm Bureau recommends adding additional text to Section IV.C and to the exclusions in Section IV.D to specify that agricultural discharges already regulated under an existing irrigated lands regulatory program general order are not further regulated under the Procedures for normal agricultural activities.	The Procedures were not revised in response to this comment. Section IV.D of the Procedures identifies areas and activities that are exempt from complying with these specific Procedures. These areas and activities are not exempt as waters of the state and could be regulated under another program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures. See also response to comment #11.26.
11.28	Waters of the State Procedures. As drafted, the Procedures go far beyond the goal of filling the regulatory gap to regulate “isolated” wetlands and, in the process, will create substantial burdens on farmers and ranchers and will strain Water Board resources. Farm Bureau respectfully urges the State Water Board to make revisions to the wetland definition and delineation procedures, exclusions from application requirements (especially those for agricultural activities) and alternatives analysis requirements, and compensatory mitigation requirements.	See response to comment #11.25 (above).

Letter 12: California Habitat Conservation Planning Coalition

Comment Number	Comment	Response
12.1	Lines 255-256 of the Procedures: The applicant for an individual order should be able to rely on the overall sequence of actions in a watershed plan that covers the individual project, rather than a sequence for the individual project.	The Procedures outline incentives for applicants that plan a project in accordance with a watershed plan approved for use by the Water Board, such as a possible reduction in the amount of compensatory mitigation. While an applicant may be able to rely on avoidance and minimization measures that are outlined in a watershed plan, those measures will need to be submitted with the application for an individual project and approved through the application process.
12.2	Lines 332-336 of the Procedures: This states that the permitting authority may approve mitigation in a different watershed. The example given is a project affecting more than one watershed. Please add a second example-"if the compensatory mitigation follows the requirements of an approved watershed plan."	The provided example has not been included in the Procedures. While the example provided by the commenter could be appropriate, the specific conditions would need to be carefully considered. Thus the recommendation is too broad and given the language is advisory, is not necessary.
12.3	Lines 1017-1020 of the Procedures: It is important to retain this language regarding mitigation, which requires "the protection and maintenance of terrestrial resources, such as non-wetland riparian areas and uplands, when those resources contribute to or improve the overall ecological functioning of aquatic resources in the watershed."	Comment noted. The Procedures have retained this language.

Letter 13: California High-Speed Rail Authority

Comment Number	Comment	Response
13.1	Importantly, the Revised Procedures could still force the Authority to repeat the alternatives development process in circumstances where the Authority has already reached agreement with USACE and USEPA.	Consistent with footnote 8 of the Procedures, and as set forth in a letter from the State Water Board to High- Speed Rail Authority dated March 1, 2018, the State Water Board intends to continue to follow its memorandum of understanding with respect to the high speed train project. The MOU contemplates early engagement to ensure that any required alternatives analyses are adequately coordinated to prevent any repetition.
13.2	Additionally, for Authority projects where an alternatives analysis may not be required under the Clean Water Act, the Revised Procedures could require such an analysis, likely delaying approval, permitting and implementation, all with little environmental benefit.	Consistent with footnote 8 of the Procedures, and as set forth in a letter from the State Water Board to High- Speed Rail Authority dated March 1, 2018, the State Water Board intends to continue to follow its memorandum of understanding with respect to the high speed train project.
13.3	As such, the Authority remains concerned with situations where the Revised Procedures would require an alternatives analysis for nationwide ("NW") permitting where the Army Corps of Engineers ("ACOE") does not require one.	See general response #1.

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13.4	Additionally, the Revised Procedures continue to use the term "case-by-case" basis with respect to Sections IV. A.2.b and c (potential impacts due to climate change and the requirement of compensatory mitigation, respectively). This casts doubt on whether and to what extent these potentially lengthy assessments would be required at the time of application submittal. Moreover, the regulated community needs to know what the rules are so they can set budgets, schedules and expectations. Reliance on "case-by-case" rationale suggests the State Board will make up the rules ad hoc, which is contrary to the reasonable goal of regulatory certainty.	See general responses #7 and #8.

Comment Number	Comment	Response
13.5	The Revised Procedures do not address the concern that the State Board would cover dredge or fill activities more broadly than the federal Clean Water Act. In broadly including activities that "could" result in discharge, the Revised Procedures introduce an inherent conflict in the scope of the alternatives analysis required by the Revised Procedures and federal law.	Section IV of the Procedures has been revised to clarify that discharges of dredged or fill material or other waste materials to areas that are not waters of the state, but that could affect the quality of waters of the state, may be addressed under different Water Board regulatory programs. In contrast, once there is an activity that results in the discharge of dredged or fill material to waters of the state, the Water Boards may also regulate activities that could affect the water quality of waters of the state in an Order. For example, section IV.A.f requires applicants to describe potential direct and indirect impacts. An Order may include conditions that help avoid or minimize potential indirect impacts.
13.6	Where the Revised Procedures describe the potential use of General Permits and explain that alternatives analyses will not be required for those permits, the Revised Procedures fail to include the types of General Permits that might be covered.	The Procedures provide an exclusion from the alternatives analysis requirement if the project meets that terms and conditions of a Corps' general permit that has been certified by the Water Boards. See also general response #1 for information about an exemption provided for certain projects that meet the terms and conditions for coverage under uncertified Corps' general permits, which includes uncertified nationwide permits.

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13.7	If the State Board is not inclined to exempt certain "projects" from alternatives analysis in cases where they are entitled to NW authorization, the State Board should consider crafting General Permits that specifically integrate NW permit program criteria.	See general response #1.
13.8	The Revised Procedures do not address the Authority's request that the term "project" be defined in a way that mimics the "single and complete" project as defined by the ACOE. The absence of a consistent definition that considers water "crossings" as a "single and complete" project renders the new tiered analysis strategy ineffective for much of the Authority's Program.	The Water Boards consider all impacts to water resources resulting from the whole of the project in accordance with CEQA. The Procedures have been revised to include a definition of “Project.” For the NWP program, the Corps makes the determination that the classes of authorized activities comply with the CWA section 404(b)(1) Guidelines and have only minimal adverse effects individually and cumulatively. This determination is based on federal statutes and applicable federal regulations and policies. For this reason, the Water Boards must make an independent determination based on its own authorities as to the significance of the environmental effects, individually and cumulatively, on state waters. A project qualifying for a NWP may not be minimally impacting environmentally on state waters based on CEQA and other applicable California statutes, policies and regulations.

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13.9	While the Revised Procedures still require deference to the ACOE's determination on an alternatives analysis, this deference is only required where the State Board has "collaborated" with the ACOE, as opposed to the former term, "consulted." It is unclear what "collaborate" means in this context, though it appears the State Board assumes it will have more of a hand in shaping alternatives analyses than previously proposed. In the absence of "collaboration," this new requirement is still problematic because it creates additional uncertainty and the potential for conflicting and/or inconsistent requirements from the ACOE and the Regional and State Boards.	See general response #1.
13.10	The Revised Procedures do not address the Authority's comments regarding the potential for conflicting mitigation. Instead, the Revised Procedures maintain that the Board will "consult and coordinate with" other public agencies with concurrent mitigation requirements, but only "where feasible." As such, the Revised Procedures still leave open the possibility that mitigation accepted for purposes of the ACOE's obligations under the federal Clean Water Act would not be acceptable under the Revised Procedures.	As the commenter noted, under the draft Procedures, the Water Boards would be required to make a separate decision on the type and amount of compensatory mitigation necessary to fully compensate for unavoidable impacts to state waters from the applicant's project. This is consistent with California's Porter-Cologne Water Quality Control Act which gives the Water Boards the responsibility to protect beneficial uses of all waters of the state, including some waters outside of federal jurisdiction. In addition, pursuant to the Clean Water Act, section 401(d), the Water Boards' water quality certifications should set forth limitations necessary to assure compliance with various provisions of the Clean Water Act "and with any other appropriate requirement of State law", which includes Porter- Cologne, CEQA, and any

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		adopted Water Quality Control Plans and regulation. Where feasible, the permitting authority will align with federal compensatory mitigation requirements. The Procedures state in section IV.B.5.b, “[w]here feasible, the permitting authority will consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits with a single mitigation project, thereby reducing the cost of compliance to the applicant.” Applicants are also encouraged to facilitate interagency collaboration by scheduling planning meetings and site visits and by making documentation readily available for multiple agency review.
13.11	The Revised Procedures should include a definition of the term "temporary" or "permanent" impacts,	Water Board staff will verify permanent and temporary impacts to waters in consultation with the applicant and other permitting agencies considering project and site parameters. Temporary impacts are commonly understood as those which eventually reverse, allowing the affected resource to return to its previous state. Consequently, distinguishing between permanent and temporary impacts will be based on site-specific information including the type of water, the severity and duration of the impact, the type of equipment, and environmental conditions.
13.12	Without greater specificity regarding these "case-by- case" analyses, there is no way to understand when and to what extent the Board will require an assessment.	See general response #7.

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13.13	The Authority is therefore concerned that this increased workload will slow Board review and approvals for Program permitting and thereby interfere with timely Program delivery. Potential delays and increased permitting costs associated with additional review would not only result at a permit-by-permit level, but from program-wide demands on staff time.	See general response #6.

Letter 14: California Water Association

Comment Number	Comment	Response
14.1	In accordance with the revised Public Notice of August 22, 2017 for written comments on the revised draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Material into Waters of the State, the California Water Association ("CWA") is writing to inform you of its endorsement of two coalition comment letters that are being filed concurrently today. The first letter is sponsored by City of Ventura, the Sand Bernardino Valley Water Conservation District, and the Santa Clara Valley Water District, and is also endorsed by the Association of California Water Agencies and the California Municipal Utilities Association (collectively, the "Utilities" letter). The second letter is from a broad coalition of water interests, including drinking water utilities, wholesale water agencies, and agricultural and business interests (collectively, the "Coalition" letter).	Comment noted. For responses to comments received from the "Utilities," refer to comment letter #82. For responses to comments received from the "Coalition," refer to comment letter #8.
14.2	Although most of the these utilities are not directly affected by the proposed regulatory program being contemplated in this proceeding, wholesale water agencies, as well as their partners in a variety of recycled water, aquifer storage, and recovery, and other facilities designed to provide water to Californians, will be impacted by the proposed regulatory program.	Comment noted. Note that the Procedures will not create a new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures that regulate dredge or fill discharges.

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14.3	Indeed, the principal reason CWA has endorsed the two separate comment letters is that the proposed procedures have the potential to hinder the very activities the State Water Resources Control Board ("State Water Board") is aggressively promoting in other venues – provide for augmentation of water supply, storage, and capture in a sustainable, reliable, and environmentally sensitive manner.	See general response #2.
14.4	Further, given that the procedures will affect a wide range of large and small infrastructure projects, CWA supports the adoption of a wetland definition and delineation techniques that are identical to the established definition used by the U.S. Army Corps of Engineers ("Corps").	See general response #4.
14.5	Exclude multi-benefit constructed facilities from permitting under the proposed regulatory program. This means removing these facilities from the jurisdictional waters of the state ("WOTS").	See general response #2.
14.6	Make the wetland definition and delineation procedures consistent with their federal counterparts under the Corps' Section 404 program;	See general response #4.
14.7	Harmonize the exclusions from the Procedures with federal law	See general response #2.
14.8	Identify non-wetland WOTS subject to the Procedures and include guidance for determining the limits of such features that is consistent with Corps practice	See general response #11.

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14.9	Eliminate the requirement of an alternatives analysis for all discharges subject to streamlined permitting procedures under Corps-issued general permits; and	See general response #1.
14.10	Make the mitigation requirements and priorities of the Procedures consistent with the Corps' Mitigation Rule.	The Procedures incorporate the Corps' mitigation rule in Subpart J of the State Guidelines to ensure consistency. In addition, the Procedures clarify how the watershed approach may be applied to the amount, type and location of mitigation and also the Water Boards' authority over certain requirements.
14.11	CWA stands ready to work with the Board to address the concerns expressed in the coalition letters and to reach an optimal outcome for the affected parties.	Comment noted.

Letter 15: California Department of Transportation

Comment Number	Comment	Response
15.1	The Procedures cover discharges for dredged or fill materials into waters of the State; however, they discuss delineation procedures only for wetlands. Please clarify whether these Procedures apply to all waters of the State, or only to wetlands. If the Procedures apply to all waters of the State, please include a definition and delineation method for non-wetland waters of the State. We recommend the Ordinary High Water Mark delineation manuals developed by the United States Army Corps of Engineers (USACE) for the Arid West and Western Mountains and Valleys regions. These manuals are available on the USACE website: (link provided).	Sections II and III of the Procedures provide a technical wetland definition, delineation procedures for determining if an area meets the technical wetland definition, and a jurisdictional framework for determining if a wetland is a water of the state. Section IV of the Procedures applies to all waters of the state, including wetlands. See also general response #11.
15.2	While the Procedures provide a definition for wetlands, they are ambiguous with regard to the extent of the Water Board's jurisdiction over waters of the State. Please provide guidance or criteria that Water Board staff will use to determine the extent of jurisdiction, to provide Caltrans and the rest of the regulated public with guidelines to follow during project development. This will help Caltrans to plan for avoidance and minimization measures earlier in the project development process, as well as increase the number of complete applications we can submit, as Section IV.A(l)(b) requires submittal of a delineation of wetlands and waters of the State, if they exist within the project.	See general response #11. Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. It is not expected that these delineations will diverge greatly from what is already being prepared for the Corps. Applicants are encouraged to contact the appropriate Water Board for consultation on determining jurisdiction.

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15.3	While we support the Water Board's efforts to encourage watershed-based management of water resources, the Procedures' requirements related to watershed plans put undue burden on applicants. Without contrary examples, it appears that developing any single watershed plan could be a costly, contentious, many-year process. And for many small watersheds, developing a watershed plan may not be reasonable. We are concerned that, until watershed plans are developed, projects will be subject to additional workload, additional delays, and elevated compensatory mitigation ratios. We support the Water Board's efforts to develop watershed plans, though we do not see the Water Board's plan to develop them. Until the Water Board develops watershed plans statewide, there will be an undue burden on applicants.	The use of a watershed plan is not a requirement in the Procedures but rather an incentive for applicants to apply the watershed approach through the use of watershed plans when planning projects that will impact waters of the state. There are existing plans such as habitat conservation plans (HCPs), natural community conservation plans (NCCPs), and special area management plans (SAMPs) that may meet the definition of a watershed plan and may be submitted to the Water Boards for approval to use as a watershed plan, but the Water Boards will not approve any Watershed plans until the Procedures are adopted. It is not the intention of the Water Boards to independently develop watershed plans, but instead approve the use of watershed plans pursuant to the Procedures for dredge and fill projects.
15.4	The Procedures substantially expand the information that will need to be reviewed by Water Board staff in order to process applications. We are concerned that this will substantially increase workload for Water Board staff and, as a result, cause project delays. We have not yet seen a plan to accommodate the additional workload. Does the Water Board plan to add positions, and will these be funded by increased application fees? How will the regulatory divisions be restructured? Please provide information that shows how project delays will be avoided.	See general response #6.

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15.5	We are concerned that any sudden change in application requirements or process could cause substantial re-work and project delays. To minimize project delays, we request that the Water Board develop and distribute an implementation plan for the proposed Procedures, including phasing of new requirements.	See general response #6. In addition, the State Water Board recognizes that once the final Procedures are adopted, it would be reasonable to allow time for applicants to come into compliance and become familiar with the Procedures. Therefore, the Procedures will not be effective until nine months after approval by the Office of Administrative Law. The Procedures will not apply to any applications received prior to the effective date.
15.6	We also request that projects that apply or obtain a 401 Certification or Waste Discharge Requirements before implementation be grandfathered under the existing programs.	See response to comment #15.5.
15.7	In order to plan projects in environmentally conscious and cost-effective manner, it is important to us to have predictability in the determination of wetland areas. In some cases, effective planning will require verification of a waters delineation even before the permitting process begins. We understand that, in cases where the USACE issues a jurisdictional determination, the Water Board will rely on the USACE's jurisdictional determination. However, in cases where there is no USACE jurisdiction, we do not see a process for the Water Board to verify a delineation. Please provide a process for the Water Board to verify waters	Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. To the extent that waters are not included in a Corps verified aquatic resource report, these delineations will be verified by Water Board staff during the application review. Water Board staff will rely on determinations made by the Corps when identifying waters of the U.S. and applicants should use the same wetland delineation procedures for identifying wetland waters of the state that are outside of federal jurisdiction. Applicants are encouraged to contact the appropriate Water Board office for a pre-

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	delineations when there is no USACE jurisdiction.	application consultation to discuss the best strategy to verify jurisdiction for a particular project.
15.8	The term "permitting authority" is used throughout the Procedures; however, it is unclear who this is referring to and if it is referring to a specific party. While it is defined in the Definitions, for clarity, we request that you define it when it is first introduced in the Procedures, and that you capitalize the term throughout the Procedures as it is a defined term.	The term “permitting authority” is defined in section V as the entity or person issuing the Order, i.e., the applicable Water Board, Executive Director, Executive Officer, or their designee. Regarding capitalizing the term, the Procedures will be incorporated into the Ocean Plan and the Inland Surface Waters, Enclosed Bays and Estuaries Plan. Each of these plans has different ways for identifying defined terms. At the time of incorporation, non-substantive edits will be made to be consistent with the style of each document.
15.9	Section III of the procedures: This section states that "The permitting authority shall rely on any wetland area delineation from a final aquatic resource report, with a preliminary or approved jurisdictional determination issued by the USACE for the purposes of determining the extent of wetland waters of the U.S." This produces a procedural issue where we often will not receive a preliminary or approved jurisdictional determination from the USACE until we receive our CWA Section 404 permit. Furthermore, as discussed in RGL 16-01, USACE can process an application with only an aquatic resources report, without a jurisdictional determination of any kind. However, the USACE cannot issue a CWA Section 404 permit prior to the Water Board issuing a CWA Section 401 Water Quality Certification. We appreciate that you are accepting the USACE wetland delineation	The Procedures were revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2), including reports verified per Corps RGL 16-01.

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	methodology, and that you updated the language to include final aquatic resource reports; however, it appears that the procedural issue remains. This comment also applies to Section IV.B(2).	
15.10	Section IV.A(I) Please clarify whether a delineation is only required for wetland areas, or if waters of the State that are not wetlands should also be identified and mapped.	Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. If waters outside of Corps jurisdiction are identified, these delineations will be verified by Water Board staff during the application review.
15.11	Section IV.A(I) Rounding impact quantities to nearest one-thousandth (0.001) of an acre is excessively fine scale. We request that a more appropriate scale, such as one hundredth (0.01) or one-tenth (0.1) be used.	The specification to round to the nearest 0.001 acres was added at the request of an earlier commenter to more precisely characterize impacts for small projects. This language has been revised. The quantity of impacts to waters proposed to receive a discharge of dredged or fill material at each location shall be rounded to at least the nearest one-hundredth (0.01) of an acre. This revision retains the allowance for applicants to round impacts to a smaller quantity (one-thousandth (0.001) of an acre), to more precisely characterize impacts related to dredge or fill activities. This impact measurement is necessary for determining fees, analyzing the level of threat and complexity, and determining the amount of required compensatory mitigation, if applicable.

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15.12	Section IV.A(I) (f)-The Procedures were revised to require assessment of "rare" species without defining "rare." Whereas "threatened" and "endangered" have definitions under State and federal law, "rare" is commonly used with many different meanings. It could refer to rare plants as defined by the Department of Fish and Wildlife (DFW), DFW's Species of Special Concern, many other lists maintained by other agencies or groups, or an even less-commonly understood definition. The use of such a term that lacks a concrete definition would lead to misunderstanding and could lead to delays. Please remove the requirement to assess "rare" species or change it to a defined term. (f) -The Procedures were revised to require information not only on aquatic species, but all rare, threatened or endangered species. This appears to require information on terrestrial species, which could be interpreted to mean such species as northern spotted owl or desert tortoise. Justification to regulate such terrestrial species under the Procedures appears to be lacking. Please provide justification or clarify a limitation to aquatic species or aquatic habitat.	The Procedures were revised in response to this comment. Section IV.A.1.f clarifies that rare, threatened, or endangered species as used in the Procedures refers to plant and animal species listed as rare, threatened, or endangered pursuant to the California Endangered Species Act of 1984 (Fish & Game Code, § 2050 et seq.), the Native Plant Protection Act of 1977 (Fish & Game Code, § 1900 et seq.), or pursuant to the Federal Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.). When considering proposed discharges of dredged or fill material to waters of the state, the Water Boards must find that the project does not have a significant effect on the environment, as defined in section 15382 of CEQA. Since the designation of rare, and rare as defined in CEQA, does not distinguish between water dependent species, it is not appropriate to make that distinction in the Procedures. However, language describing how impacts from the project are to be assessed has been clarified in the Procedures to require assessment of impacts to habitat “in waters of the state” from “discharges of dredged or fill material…” This revision will ensure that an assessment of impacts will be triggered where a nexus to waters exists.
15.13	Section IV.A(2): Please update the title of this section to reflect that this is information that may be required for a complete application, on a case-by-case basis.	The requirements listed in section IV.A.2 of the Procedures state conditions for when they would be required for a complete application. For example, a draft restoration plan is required in all cases where temporary impacts are proposed.

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15.14	Section IV.A(2): The USACE's wetland delineation procedures were developed to be used at any time of year. We are concerned that requiring supplemental wet season data may cause undue delays to projects, as well as, potential conflicts with jurisdictional determinations.	See general response #7.
15.15	Section IV.A(2): Climate change professionals and practitioners generally support that climate change impacts should be assessed on a regional basis rather than a per project basis (Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California April 2016). We request that climate change analysis be completed in the basin plans, not through the permitting process. If climate change analysis is required on a per-project basis, we request that you accept the analysis included in the CEQA document for the project.	See general response #7.
15.16	Section IV.A(2): Please also provide the mitigation preference included in Appendix A Subpart J §230.93(b) in the main text of the Procedures to clearly state that the Procedures continue the mitigation priority established by the U.S. EPA and USACE of 1) Mitigation Banks, 2) ILF programs, and 3) Permittee Responsible Mitigation.	The State Supplemental Guidelines are included as an appendix to improve the structure and clarity of the Procedures. Although located in an appendix, the State Supplemental Guidelines, which include section 230.93(b) referred to by the commenter, are nonetheless an integral part of the Procedures with equal effect. The State Supplemental Guidelines have retained section 230.93(b)(2) through (b)(6), which explain why preference may be given to certain kinds of compensatory mitigation. It should be noted that although section 230.93(b) does outline a hierarchy of compensatory mitigation options, section 230.93

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		(a), states that the permitting authority must determine the compensatory mitigation to be required in the permit "based on what is environmentally preferable." In this sense, the hierarchy is often referred to as a "soft preference" because the permitting authority must determine the appropriate type of compensatory mitigation based on what would be environmentally preferable in a specific case. In determining what is environmentally preferable, the permitting authority "must assess the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project."
15.17	Section IV.A(2): (c)(i) - The information required here would be contained in an approved watershed plan. Please include the option to reference an approved watershed plan instead of duplicating the information provided there.	In order to ensure efficient and timely review of applications, applicants should extract or summarize information needed to fulfill the watershed profile requirement and reference the information source for verification.
15.18	Section IV.A(2): c)(i) We also request that you indicate what scale of watershed applicants should consider when proposing a watershed approach for mitigation. Most of the information required here can be found on EcoAtlas.org. As EcoAtlas was developed using funding provided, in part, by the Water Board, and is under the oversight of the California Wetland Monitoring Workgroup, which is chaired by the Water Board, we recommend that you	The Procedures outline the watershed approach for mitigation in section IV.A.2.b.i & iii (formerly items (i) and (ii) in section IV.A.2.c in the 2017 draft Procedures). The applicant characterizes the abundance, diversity and condition of aquatic resources, termed a "watershed profile," in the project evaluation area to assess project impacts and potential compensatory mitigation sites. The Procedures state that "the scope and detail of the

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	reference this tool here.	watershed profile shall be commensurate with the magnitude of impacts associated with the project" (see V Definitions). Thus, the level specificity for condition assessments is determined by the nature of the impacts. In general, this ranges from field sampling using a rapid assessment method, such as the California Rapid Assessment Method in the case of impacts with significant effects, to using best professional judgement combined with available resource information for impacts with minimal effects. As further stated in definition of watershed profile noted above, sources of information for a watershed profile include "online searches, maps, watershed plans, and possibly some fieldwork if necessary." This would include the use of data from EcoAtlas. In addition, the definition of a watershed profile has been revised to mirror information needs of the Corps to allow for a consistent application of the watershed approach. As to specifically referencing EcoAtlas, because the draft Procedures would be incorporated into a water quality control plan, current methods an computer applications subject to change are not referenced.

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15.19	Section IV.A(2): (c)(ii)-This subsection allows for mitigation that is located outside of the impacted watershed to be proposed; however, it also requires that the applicant describe how the proposed mitigation "does not cause a net loss of the overall abundance, diversity, and condition of aquatic resources, based on the watershed profile." While we appreciate that this allows for a fuller range of mitigation options, we request clarification as to how mitigation proposed outside of a watershed would be able to meet the needs of the profiled watershed.	The Procedures explain how to determine no net loss when mitigation outside the watershed is proposed in section IV.A.2.b.iii (formerly IV.A.2.c.ii in the 2017 draft Procedures).
15.20	Section IV.A(2): (c)(v)- We request that buffers included in a mitigation plan also provide compensatory mitigation credits to the project, consistent with Appendix A, Subpart J §230.93(h)(2)(i).	The State Supplemental Guidelines includes section 230.93(h)(2)(i), and references Procedures section IV.B.5.c for conditions of implementation. The latter section states “[a] reduction in the mitigation ratio for compensatory mitigation will be considered by the permitting authority if buffer areas adjacent to the compensatory mitigation are also required to be maintained as part of the compensatory mitigation management plan.”
15.21	Section IV.A(2): (c)(vi)-This requirement is addressed in the Caltrans Statewide Stormwater Permit (Orders 2012- 0011-DWQ, WQ 2001-006-EXEC, WQ 2014-0077-DWQ, WQ 2015-0036-EXEC, and 2015-0036-DWQ). We request that this requirement be amended to allow the acceptance of existing permits that also cover this requirement.	Section IV.A.2.b.vii (formerly IV.A.2.c.vi in the 2017 draft Procedures) applies to restoration and establishment compensatory mitigation projects implemented by dischargers for permanent impacts to aquatic resources. The Caltrans Statewide Stormwater Permit does not authorize compensatory mitigation projects and does not cover this notification requirement for these activities.

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15.22	Section IV.A(2): (d) - This requirement is included in Caltrans' Statewide Construction General Permit (2012- 006-DWQ), which covers all Caltrans' construction activities. We request that this requirement be amended to allow the acceptance of existing permits that also cover this requirement.	If an applicant has prepared a water quality monitoring plan in compliance with another board Order, they may submit that plan to fulfill application requirements under the Procedures. Note that to satisfy this requirement, the water quality monitoring plan would need to cover in-water work or water diversions.
15.23	(e) - We request that nursery or seed purchase locations be included as options to seed collection locations.	The Procedures require seed collection location information in the draft restoration plan. If seed is purchased from a nursery, then information as to the nursery's seed source should be provided. Ideally the seed should be collected from a close geographic area, which improves the likelihood of survival success.
15.24	Section IV.B(2)-In addition to comment 4(a) above, we request clarification on the delineation and approval process for waters of the state that are not wetlands, such as those with an Ordinary High Water Mark.	See general response #11. Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. It is not expected that these delineations will diverge greatly from what is already being prepared for the Corps. Applicants are encouraged to contact the appropriate Water Board for consultation on determining jurisdiction.
15.25	Section IV(B)(3) - We request that the least environmentally damaging practicable alternative (LEDPA) analysis requirement be waived for any project that meets the criteria for a CWA 404 nationwide permit under the USACE's permitting program.	See general response #1.

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15.26	If the Water Board will not extend the exemption to the entire nationwide permit program, then we request that an alternative analysis prepared under CEQA be accepted in place of a LEDPA analysis.	See general response #1. See also section 11 of the staff report. An alternatives analysis conducted pursuant to CEQA and an alternatives analysis required by the Procedures serve different purposes. An alternatives analysis required for the purposes of CEQA covers a much broader set of environmental impacts, including aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public health and vector control, public services, recreation, transportation and traffic, utilities, and service systems. The Water Boards may need to analyze broader environmental impacts if they are lead agency under CEQA. In addition, since an alternatives analysis required under CEQA covers a much broader set of environmental impacts than impacts to water resources, they do not always include alternatives designed specifically to avoid or minimize impacts to waters; rather, the alternatives assessed are often larger-scale project alternatives. However, the CEQA alternatives analysis may be sufficient to fulfill the alternatives analysis requirements set forth in the Procedures if that analysis demonstrates that the impacts to waters of the state have been avoided and minimized to the extent practicable.

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15.27	Section IV.B(5)(c)- We request that restoration and enhancement of aquatic resources to historic conditions be given equal weight as creation of new aquatic features in regions where conversion and degradation of aquatic resources, rather than loss, has caused a loss of functions and values of waters of the State.	Generally restoration (reestablishment/rehabilitation) is given equal weight with establishment (creation) because both types of mitigation result in a gain in area and function. On the other hand, enhancement results in a gain in function, but not in area, so is of lesser “mitigation value.” However, if the impact site is limited to ecological degradation of aquatic resources, then an enhancement mitigation project would be appropriate since area would not need to be replaced, only functions.
15.28	Section IV.B(f)- Caltrans is unable to provide the forms of financial security identified in this section of the Procedures as our doing so would violate Article XVI of the California Constitution, section 6, and Government Code section 16305.3. We request that you include an option for documenting financial security that governments can provide, such as a letter committing to payment, and documenting that funds are set aside for the purpose of completing mitigation. We have attached our current interim policy for providing similar financial assurances to the California Department of Fish and Wildlife to meet their requirements under California Fish and Game Code sections 2080.1 and 2081.	Section IV.B.5.f and Appendix A, Subpart J section 230.93(n)(2) state that financial assurances may be provided in a variety of forms and do not preclude the option of financial security provided by a governmental agency as a letter committing to payment based on funds being set aside for this purpose. However, to provide clarity, the Procedures were revised in response to this comment to state that the financial security shall be in a form consistent with the California Constitution and state law.

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15.29	Section V - Definitions: Project Evaluation Area - The statement that "the size and location of the ecologically meaningful unit shall be based on a reasonable rationale" is subjective. We request that you provide rationale that applicants should use to determine an appropriate Project Evaluation Area to reduce the confusion and need to re-work.	Due to the variety of the size of projects that are certified through the water quality certification program, the appropriate “ecologically meaningful unit” will vary depending on the scope of their individual project area. Projects can range in size from replacing a small culvert, therefore only needing a small watershed profile, or renewable transmission lines that could span many miles. State Water Board recommends using the same evaluation area used when evaluating the project under CEQA. Best professional judgment should be applied when determining a project evaluation area.
15.30	Appendix A, Subpart A, §230.3 -The definition is overly broad and ambiguous. If "special aquatic sites" is intended to refer to those items listed in Subpart E, we request that they be included in the definition, and that the definition be limited to those listed. Also, the Procedures only establish wetlands as waters of the State. We request clarity on whether the other special aquatic sites are waters of the State, and how to establish their jurisdictional status and boundaries.	Special aquatic sites, as defined in Appendix A, are waters of the state that have “special ecological significance.” As such, the State Supplemental Dredge or Fill Guidelines have more restrictive alternatives analysis requirements for proposed discharges of dredged or fill material into special aquatic sites (see section 230.10(a)(3)). The Procedures includes the state’s technical definition of what constitutes a wetland water of the state. The State Water Board does not intend to include definitions of other waters of the state at this time (outside of the definition provided in Porter-Cologne) because it is outside of the scope of this project.

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15.31	We urge the Board to consider the costs of the proposed regulation on Caltrans, other state agencies, and other stakeholders. Please consider incorporating our recommendations and evaluate the anticipated benefits to aquatic resources in comparison with additional costs to implementing agencies.	Section 11 “Economic Considerations” of the Staff Report provides an analysis of compliance with the Procedures, including methods for achieving compliance, and the associated costs. Many of the elements of the Procedures are the same as the federal CWA section 404(b)(1) Guidelines. As such, much of the Procedures are already applicable to projects in waters of the U.S. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California’s aquatic resources.

Letter 16: Carlton, Alan

Comment Number	Comment	Response
16.1	My name is Alan Carlton from Alameda and I am writing today to express my support for the proposed statewide wetlands policy regulation (“Procedures for Discharges of Dredged or Fill Materials to Waters of the State”), and ask you and the other board members to do the same.	The commenter’s support of the Procedures is noted.

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16.2	Despite all of this, President Trump has recently acted to roll back federal protections for wetlands. This is wholly unacceptable, and the state must do all it can to protect our resources from federal inaction. The State Water Resources Control Board stands in a unique position to lead in the face of federal retreat. We urge you to use your authority to adopt the statewide wetlands policy.	The commenter's request for adoption is noted.

Letter 17: Carothers, Leslie

Comment Number	Comment	Response
17.1	I understand that the proposed Wetlands Rule will give the Water Board clearer authority to do what's necessary to prevent the loss of further wetlands, and restore some of what we've already lost, which I wholeheartedly support.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 18: California Council for Environmental and Economic Balance

Comment Number	Comment	Response
18.1	We applaud the SWRCB and staff in its efforts to more closely align the Draft Procedures to the federal requirements and to provide statewide consistency as they apply to waters of the state (WOTS). We understand that these efforts extend beyond the Draft Procedures to include the issuance of General Orders for the recent 2017 Nationwide Permits (NWP) and specifically the expansion of the Certification of NWP 12 – Utility Line Activities. We request that clarifying language be added to indicate that projects covered by General Orders are excluded from these Draft Procedures.	The Procedures have been revised to specify that the requirements set forth in sections IV.A and IV.B apply to only application submittals for individual orders. Additionally, the language in section IV.C has been revised to state that discharges regulated under a general order are not subject to the requirements set forth in sections IV.A and IV.B.

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18.2	However, we are concerned about the broad nature of the Draft Procedures that would encompass all impacts to WOTS.	Comment noted.
18.3	Further, the Draft Procedures are in some cases are not aligned with the U.S. Army Corps of Engineers' (USACE or Corps) 404 CWA program.	One goal of the Procedures is to align Water Board practices with federal practices, to the extent practicable, while still protecting California's aquatic resources. It is unclear which specific provisions this commenter is concerned about.
18.4	These concerns, we believe, will result in significant burden on the regulated entities subject to these procedures that outweigh any benefit from standardization that may be realized.	The Procedures are not intended to expand jurisdiction over wetland waters of the state, but rather bring consistency across the boards by adopting a wetland definition that represents all the various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services. The determination of whether a feature meets the wetland definition is separate from the determination as to whether that wetland is a water of the state. In an attempt to avoid the regulation of features that may meet the wetland definition, but have not been regulated in the past by the Water Boards, a jurisdictional framework has been provided for determining when a wetland is a water of the state in the revised Procedures.
18.5	Additionally, a number of the provisions are vague, inconsistent and even present conflicts that will impact the Draft Procedures' implementation and are expected to result in inconsistent application by Regional Boards.	It is unclear which requirements the commenter is referring to, specifically. The Procedures are expected to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state and to prevent further losses in the quantity and quality of wetlands

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		in California. The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. Finally, the Procedures have been revised to reduce the number of case-by-case determinations, including the determination of when a wetland is a water of the state and when an alternatives analysis is required, putting further limitations on the Water Boards' discretion.
18.6	Objective 3 - Consistency with the federal CWA Section 404 program. While attempts were made to align with the USACE program, the approach described in the Draft Procedures does not fully meet this objective.	One goal of the Procedures is to align Water Board practices with federal practices, to the extent practicable, while still protecting California's aquatic resources. It is unclear which specific provisions this commenter is concerned about.
18.7	Objective 5 - Improve consistency across all Water Boards. The "case-by-case" subjectivity allowed in the processing of permit applications eliminates the consistency the SWRCB is focused on institutionalizing across Regional Boards. While we appreciate the need for regional discretion, the Draft Procedures create significant regulatory uncertainty for prospective applicants.	See general response #7. The Procedures have been revised to reduce the number of case-by case determinations. However, given the wide diversity of climates and hydrology in California, it is appropriate to leave some discretion to the Regional Boards in implementing the Procedures.
18.8	Objective 6 - Streamline the 401 Certification process. The Draft Procedures establish additional requirements that burden projects and unnecessarily complicate the permitting process.	It is unclear which requirements the commenter objects to. The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards

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		first adopted water quality certification procedures that regulate dredge or fill discharges. As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal, thereby reducing the number of information requests and expediting the application review process.
18.9	The Draft Procedures attempt to standardize the process; however, they include a set of requirements that are more onerous than most projects require. We strongly recommend that additional consideration be given to creating an off-ramp for low risk/minimally impactful projects such as minor maintenance operations. Given the extensive Water Board staff workload, this approach ensures that staff time is focused on those projects that truly require additional analyses and more comprehensive permitting.	See general response #6.
18.10	We applaud the SWRCB's efforts to streamline the permitting process, however, the "case-by-case" subjectivity will not drive consistency among the Water Boards and instead is likely to create substantial variation in permit processing	Section VI.A.2 outlines additional information that may be required for a complete application by the Water Boards on a case-by-case basis. The conditions under which the additional information may be required and the corresponding required

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	decisions between Regional Boards, as well as among staff within a Regional Board. While it may be understandable that the individual Boards be given some discretion on when to apply specific conditions, the language however includes no guidance on when or how to apply these. This open language is likely to result in inconsistencies on how these are applied and could create substantial uncertainty for the regulated community. It is critical that additional, condition-specific language be added to better define what circumstances trigger the need for additional permit application information.	information are included in this section (e.g. supplemental wet weather data may be required if delineations were conducted during the dry season). The additional items reflect information that apply to some but not all projects. The Water Board could require this additional information in all cases, but that would constitute unnecessary workload for many projects.
18.11	We appreciate that General Orders have been excluded from having to comply with the Draft Procedures. However, the impact thresholds of the Draft Procedures do not align with the USACE NWP program and should be adjusted to closer align (see specific comment 2 below).	See general response #1.
18.12	Under the Procedures, a new permitting program will be established that entail new application procedures, substantive standards and mitigation requirements that apply to all wetland and non-wetland WOTS. As structured, CCEEB is concerned they may result in problematic overlap, conflict and delay with other SWRCB priority projects and objectives.	The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures that regulate dredge or fill discharges. As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely

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		requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal, thereby reducing the number of information requests and expediting the application review process. Regarding how the Procedures interact with other Water Board programs, see response to comment #18.13.
18.13	As we consider the paths forward to promote capture and use of stormwater, CCEEB notes that there are a number of hurdles including time and funding. As we work with stakeholders on a host of pilot projects to capture and use stormwater, we question what impact these new Procedures may have on the STORMS projects when the definition of "wetland" is expanded such that areas that may not have otherwise been considered in scope for these Procedures now will be in scope and result in further added costs and time for permitting when the projects are already struggling with time and funding constraints to begin with.	The State Water Board's Strategy to Optimize Resource Management of Stormwater (STORMS) includes three phases of programmatic projects developed to encourage and facilitate using stormwater as a resource. While STORMS may inspire people to design and implement projects to capture and use stormwater, project proponents are still required to comply with any applicable regulatory program or permitting process. Therefore, a project that could involve a discharge of dredged or fill materials to waters of the state will be required to comply with the Procedures, and the applicant will be required to demonstrate that they have avoided and minimized potential impacts to waters of the state to the extent practicable and that the discharge will not violate water quality standards. This does not conflict with STORMS and its overall goal "to leverage existing regulatory tools for management of stormwater to better focus on incentive-driven multiple benefit approaches that achieve tangible results in terms of both improved water quality and supply."

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		It should be further noted that, as stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. It is important to note that application requirements outlined in the Procedures are requested during the Water Boards' existing application review process; these requirements are not new and the Procedures are not creating a new regulatory program. Finally, the Procedures provide, in the jurisdictional framework, that artificial wetlands created and maintained for storm water detention, infiltration or treatment are as waters of the state.
18.14	Additionally, under the IGP a watershed based approach as an alternative compliance option is in the works. CCEEB strongly supports such an option; however, these Procedures raise questions about how potential watershed projects may be impacted. As an example, some permittees may work within their regions on a watershed based approach that utilizes constructed wetlands to help address TMDL related contaminants.	If artificial wetlands constructed to address TMDL- related contaminants, such as through storm water treatment controls required via the IGP, meet the criteria in section II.3.d of the Procedures, then they would not be considered a water of the state.
18.15	To the extent that these Procedures move forward as drafted, CCEEB shares the concern of other stakeholders regarding the new permitting requirements and operations and maintenance (O&M) requirements that would be negatively impacted as a result of the expanded definition of expanded definition of wetlands.	It is unclear which requirements the commenter is concerned about. Please see other responses to comments that address particular concerns. See general response #12.

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18.16	Comment 1. – II. Wetland Definition (lines 30-62) The intent of the Draft Procedures to provide regulatory coverage over those wetland sites potentially not regulated under federal jurisdiction resulted in an unnecessary new definition of wetlands. The new definition will lead to regulatory uncertainty without providing any meaningful added protection of aquatic resources. Utilizing the Corps' existing definition of wetlands is both sufficient to provide coverage for wetlands outside of federal regulation and practical. Lack of Federal control over such wetlands is a result of case law requiring connectivity to navigable waters, not due to an insufficient definition of wetland. A modified wetland definition would require a new delineation manual or supplement to the manual. Additional aquatic resources that the SWRCB desires to provide coverage for should simply be captured as WOTS, or may already be covered as other "special aquatic sites" (i.e. mud flats).	See general response #4.
18.17	Completeness Review (lines 104-113) The Draft Procedures add an additional 30-day timeframe for deeming an application complete. In total, the proposed regulations could result in a 60-day timeframe for deeming an application complete, with little incentive for Water Board staff to deem an application complete at the first 30-day	The Procedures have not been revised in response to this comment. State regulatory timeframes pertaining to the issuance of 401 certifications are established by the California Permit Streamlining Act (PSA), California Government Code § 65920 et seq., which was enacted in 1977. The Procedures do not introduce

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	window. The Draft Procedures should include language that requires the permitting entity to be specific with their requests for more information within the initial 30 day period in order to avoid additional project delays. Specific Requirements should be developed and incorporated into the Draft Procedures in order to identify which projects would be required to submit each additional information item identified in subsection 2. Recommended Edits: [Language change suggestions omitted]	any new requirements that would conflict with the PSA, or add elements that would extend certification timeframes. Section 65943 (a) of the PSA provides that the Water Board has 30 days in which to determine whether an application is complete, and Section 65943(b) provides an additional 30 calendar days after receipt of supplemental information. The Procedures are consistent with these requirements in that they specify that applications be reviewed for completeness within 30 days of receipt and deemed complete within 30 days of receiving all of the required items. Applicants are welcome to submit items from section IV.A.2 with their initial application to avoid waiting the additional 30-day period for Water Board staff to list items needed on a case-by-case basis. It should be highlighted that complete application requirements, listed in section IV.A.2 are requested during the Water Board's existing application review process; these requirements are not new. The Procedures simply provide greater clarity of information necessary to make certification decisions.
18.18	Jurisdictional Determination (line 117) Subsection 1(b) indicates that if waters of the U.S are present, a delineation report and either a preliminary of approved jurisdictional determination issued by the Corps is required for a complete application. This requirement does not take into account instances where the Corps does not make a determination on jurisdiction such as non-notifying	The Procedures have been revised in response to this comment. Under Section IV.A.1.c, Items Required for Complete Application, the applicant is directed to submit a delineation of any waters, including wetlands delineated as described in section III, that are not delineated in an aquatic resource delineation report verified by the Corps. This requirement applies in cases where waters

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	NWPs. Requests for Jurisdictional Determinations are often made concurrent with permit application submittal. Additionally, the inclusion of a final decision document issued by the Corps which determines on-site jurisdiction is inconsistent with guidance issued by the Corps in Regulatory Guidance Letter (RGL) 16-01. Due to the inconsistencies identified here, this item should not be identified as a requirement for a complete application in subsection 1. Recommended Edits: [Language change suggestions omitted]	outside of federal jurisdiction are present, or in cases when the project qualifies for a non-notifying NWP. The Procedures were also revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2), including reports verified per Corps RGL 16-01. This requirement reflects that all wetland waters of the state, whether they are inside or outside of federal regulation, require delineation. Those delineations prepared to satisfy Corps application requirements may be submitted to the Water Boards to satisfy state application requirements.
18.19	Alternative Analysis (Line 141-155) It is recommended that in order to achieve consistency with the Corps permitting process, and to not place an additional unnecessary burden on the applicant, that an exemption from the alternatives analysis requirements under Subsection 1(h) be included for all projects meeting the terms and conditions of any General permit issued by the Corps. This would include all Nationwide Permits, Regional General Permits, or Programmatic General Permits. A statement from the applicant of the steps taken to avoid or minimize impacts to jurisdictional waters, as	See general response #1.

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	described in your “Tier 1 projects” should be sufficient for all projects of this nature. [Language change suggestions omitted]	
18.20	The SWRCB should consider adding an additional exemption for CEQA-exempt projects (i.e., if a project is exempt from CEQA, it would also be exempt from the alternatives analysis requirement).	A CEQA analysis and an alternatives analysis required by the Procedures serve different purposes. It does not follow that if a project is exempt under CEQA that no alternatives analysis under the Procedures is necessary. The purpose of the alternatives analysis is to identify the LEDPA. Even if a project does not have significant impacts to waters of the state, and qualifies for an exemption under CEQA, , impacts to waters of the state may be avoided or minimized and identification of the LEDPA is appropriate. In addition, there are numerous CEQA exemptions that are not based upon the assumption of no-significant impact (e.g. Public Resource Code Section 21080.23. Pipeline Projects). Accordingly, a categorical exemption from the alternatives analysis requirement for all CEQA-exempt projects is not appropriate. However, some CEQA- exempt projects may qualify for one of the existing alternatives analysis exemptions.

Comment Number	Comment	Response
18.21	Impact Thresholds Tiering (Lines 166-181) Impact thresholds under Tiers 1, 2 and 3 do not align with the USACE Program for the Alternative Analysis requirements. Recommend modifying impact thresholds to be equivalent. Also, headwater creeks are very common and of lower functional value and should not be regulated at the same level as wetlands. Thresholds should also be tied to the permanent loss of impacts which incentivizes Permittees to perform avoidance and minimization and is also in line with the USACE Program. Recommended Edits: [Language change suggestions omitted]	See general response #1.
18.22	For each of the items in this section, we suggest specific triggers or thresholds be developed based on the level of project impacts or the type of water impacted (i.e., as in items 2[d],[e],[f]).	See general response #7.
18.23	Wet Season Delineation (Lines 183-185) Subsection 2(a) indicates that if a wetland delineation was completed in the dry season, supplemental field data from the wet season could be required. This is not only potentially costly and could result in significant delays to projects, but it is unnecessary and contradictory to other requirements listed in Subsection 1 (i.e., Final aquatic resources delineation report). Corps' 1987 Wetland Delineation Manual and Regional Supplements have been developed to facilitate year- round delineations, including problematic and atypical situations. Hydric soil conditions and indicators persist once established and can be	See general response #7.

Comment Number	Comment	Response
	identified at any time of year. Additionally, it is unclear whether the permitting authority would require a wet-season delineation if a Corps' approved or preliminary jurisdictional determination was already issued (as required per Subsection 1(b)). This item should be deleted absent the SWRCB establishing a separate jurisdictional delineation approval process. Alternatively, the permitting authority should provide guidance to Permittees as to which aquatic resources or situations may warrant a wet- season delineation in order to avoid significant seasonal delays.	
18.24	Climate Change (Lines 186-188) It is unclear how the Permittee would assess the impacts associated with climate change related to a project as required by Subsection 2(b). Impacts associated with climate change should be addressed under a project's CEQA document, if applicable. Requiring a separate analysis specifically under a 401 Certification or Waste Discharge Requirement seems misplaced and would likely result in a significant financial burden on the regulated public. Guidance should be provided regarding what is required to be submitted in this analysis and when it would apply.	See general response #7.

Comment Number	Comment	Response
18.25	Watershed Profile (Lines 201-202) Subsection 2(c)(i) The information necessary to create a watershed profile for a project and any associated proposed compensatory mitigation is not readily available to applicants for all locations and would be difficult and costly to obtain. Additionally, no description of the watershed size to be evaluated for this watershed profile is identified, adding another layer of uncertainty for the potential applicant. Instead of requiring additional analysis at the landscape level, the SWRCB should align with the Corps 2008 Mitigation Rule (33 CFR Part 332) and preference for siting mitigation on a watershed-based approach. We recommend that watershed profiles only be required should a permanent impact threshold of greater than 0.5 acre be reached and that further clarity on the watershed size be provided. Recommended Edits: [Language change suggestions omitted]	The applicant characterizes the abundance, diversity and condition of aquatic resources, termed a "watershed profile," in the project evaluation area to assess project impacts and potential compensatory mitigation sites. However, the Procedures allow that "the scope and detail of the watershed profile shall be commensurate with the magnitude of impacts associated with the project" (see Section V Definitions). Thus, the level of specificity for condition assessments is determined by the nature of the impacts. In general, this ranges from field sampling using a rapid assessment method, such as the California Rapid Assessment Method in the case of impacts with significant effects, to using best professional judgement combined with available resource information for impacts with minimal effects. As further stated in the definition of a watershed profile noted above, sources of information for a watershed profile include "online searches, maps, watershed plans, and possibly some fieldwork if necessary." In addition, the definition of a watershed profile has been revised to mirror information needs of the Corps to allow for a consistent application of the watershed approach. The Procedures incentivize, but do not require, using a watershed profile developed from a watershed plan when developing a mitigation plan by allowing the permitting authority to require less mitigation under Strategy 1. Where no such watershed plan is available, the applicant may use Strategy 2. (Section IV.B.5.c.)

Comment Number	Comment	Response
18.26	Comment 5. – IV.B.3 Alternative Analysis As mentioned above in Comment 2 (section IV.A.1(g)(i)), the SWRCB should remove the pre-certification requirement associated with the NWP exemption. Projects meeting the terms and conditions of any General permit issued by the Corps should not be required to submit an alternatives analysis. The intent of the NWP Program is to provide "timely authorizations for the regulated public while protecting the Nation's aquatic resources" for activities which will result in "no more than minimal individual and cumulative adverse environmental effects." Each NWP goes through an alternatives analysis under NEPA and is consistent with the 404(b)(1) Guidelines as part of the issuance process. As such, there is no need to conduct an extensive alternatives analysis on projects that qualify under this program, regardless of the Certification status. This requirement within the Draft Procedures would subject minor activities such as routine maintenance of existing facilities to additional unnecessary review.	See general response #1.

Comment Number	Comment	Response
18.27	We recognize that the SWRCB's intent for the Draft Procedures is to align with the USACE's 404(b)(1)Guidelines, but there are two important concerns with the implementation of this approach. The Comparison of the 404(b)(1) Guidelines to the State Supplemental Dredged or Fill Guidelines strikes out all the language pertaining to the USACE's approach to alternatives analysis and thus, the procedures do not provide any documentation confirming how the alternatives analysis will be conducted. Given Water Board staff workload, and lack of experience in reviewing alternatives analyses for practicability in terms of cost, logistics, and existing technology, significant delays to project review time would occur. Staff would need considerable training in order to become proficient in this task. If alternatives analyses were only required for projects that did not comply with a Corps issued General permit, (i.e., Individual Permit), this would ensure that staff time would be focused on those projects that truly require additional analyses and more comprehensive permitting.	The State Supplemental Dredged or Fill Guidelines incorporates section 230.10(a) verbatim from the federal 404(b)(1) guidelines. Accordingly, the Procedures implement the same substantive requirements of section 230.10(a) and do not seek to add or subtract any additional requirements other than what is articulated in section 230.10(a) of the State Supplemental Dredged or Fill Guidelines. See general response #6.

Comment Number	Comment	Response
18.28	Comment 6. – C. General Orders Section C of the Draft Procedures states that the Water Boards may adopt General Orders for specific types or classes of activities that require similar conditions or limitations to minimize adverse impacts and are more appropriately regulated by general order. While this is arguably a helpful approach, another possibility would be to more clearly recognize the USACE's NWPs and provide streamlined processing for activities that qualify for these permits. They are categories of discreet activities with minimal impacts. A concern with this approach is that it would create inconsistencies among the Regional Boards in terms of how certain types of activities are regulated.	The State Water Board has historically certified a limited number of nationwide permits that qualify as CEQA exempt. For non-CEQA exempt projects, there are currently insufficient resources to complete a full CEQA review in a limited amount of time (usually 90 days between the final Federal Register Notice and the expiration date of March 17) for all classes of activities covered under approximately 50 nationwide permits for impacts in all areas of California. The commenter expresses concern that General Orders will create inconsistencies among the regional boards in terms of how certain types of activities are regulated. However, an activity is not regulated any less under a General Order than under an individual Order; the efficiency lies in the ability to bulk process permits under a General Order.
18.29	Comment 7. – Exemptions While we do not believe it is the SWRCB or staff's intent to negatively impact these other SWRCB projects and objectives, we are concerned that these Procedures as currently structured will negatively impact those other SWRCB priorities. In this regard, we propose the following changes to help alleviate these concerns and the overlaps and conflict that may arise:	Comment noted. For specific responses see responses to comments below.

Comment Number	Comment	Response
18.30	Eliminate artificial wetlands that are a result of historic human activity and that have become relatively permanent parts of the natural landscape from the applicability of the Procedures. More specifically, the Procedures need to be revised to retain the exemptions in full consistent with those recognized under federal law and to provide the regulated public with a clear understanding of what features are in scope under the Procedures.	See general response #2.
18.31	Add exclusions for industrial features and activities associated with maintenance of facilities covered by other existing Orders. This will help avoid overlap and the potential for inconsistency.	The Procedures already provide an exemption for artificial wetlands from being considered waters of the state if they meet the criteria in section II.3.d, and they were built and maintained primarily for one of the purposes listed in section II.3.d, which includes “industrial or municipal wastewater treatment or disposal.” In addition, section IV.D was revised to reflect that certain routine maintenance and operation activities that result in the discharge of dredged or fill material to artificial existing waters currently used and maintained primarily for one or more of the purposes listed in section II.3.d (ii), (iii), (iv), (x), or (xi) are not subject to the application procedures set forth in sections IV.A and IV.B, if they meet certain conditions. For facilities and activities that are covered by an existing Order regulating the discharge of dredged or fill materials, applicants should continue to abide

Comment Number	Comment	Response
		by the terms of the order and would only need to submit a new application subject to section IV of the Procedures if applying for a new order.
18.32	Specifically exclude active remediation sites that are currently under Water Board control and oversight.	The Procedures were not revised in response to this comment. In most cases, it is not expected that active remediation sites would qualify as a wetland under the wetland definition in section II due to the lack of continuous or recurrent hydrology or the size of the feature. Also note that the Procedures were revised to state that "All artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in [section II] 2, 3.a, 3.b, or 3.c are not waters of the state."
18.33	Specifically exclude all multi-benefit facilities such as constructed water quality treatment and supply facilities and the O&M required to maintain them	See general responses #2 and #12.
18.34	Specifically exclude water supply facilities, including groundwater recharge ponds and conveyance infrastructure. CCEEB is concerned failure to provide such an exemption will result in conflicts and challenges with complying with the Sustainable Groundwater Management Act (SGMA) and its groundwater sub-basin objectives.	See general response #2.

Letter 19: California Department of Fish and Wildlife

Comment Number	Comment	Response
19.1	The Procedures help eliminate ambiguity in the determination of whether a given site is a wetland based on the three wetland indicators of hydric soils, wetland vegetation, and hydrology. Under the Procedures, all three indicators must be present. In this context, CDFW believes that this definition will provide increased protection for California wetlands and better achieve the "no overall net loss" goal of Executive Order W-59-93.	The commenter's support of the proposed wetland definition is noted; however, the commenter's interpretation of the proposed wetland definition is not entirely accurate. Under the Procedures, an area would be classified as a wetland if vegetation is not present but hydrology and hydric soils are. This is considered a modified three parameter wetland definition. See general response #4 for more information.
19.2	While CDFW supports the State Water Board's efforts to define wetlands and those that are considered waters of the state. CDFW considers this definition to apply specifically to State Water Board programs, but not to CDFW in its regulatory or policy applications.	The wetland definition would apply to only programs administered by the Water Boards. The Water Boards' wetlands definition would not be binding on other agencies administering programs that also regulate wetlands. Another agency would only use the Water Board definition of a wetland if that agency is submitting an application for the discharge of dredged or fill material under the Procedures.

Comment Number	Comment	Response
19.3	CDFW supports improving the overall efficiency of the permitting process for wetland restoration projects. However, CDFW is concerned that the proposed ERE Projects definition may be too broad and may inadvertently allow projects with only a minor or insignificant wetland restoration component to qualify when an alternatives analysis would be most appropriate. As proposed, ERE Projects are not limited to those state or federal agencies with the statutory mandate to manage natural resources, but is available to all agencies. CDFW recommends the ERE Projects definition as applied to federal or state agencies be limited to those federal and state agencies statutorily tasked with natural resource management and implementing projects with a primary purpose of wetland restoration.	Revisions have been made to the Ecological Restoration and Enhancement Project (EREP) Definition in the Procedures to reflect that state and federal agencies tasked with natural resource management may undertake projects that qualify as an EREP. The EREP definition restricts other proposed projects to those with binding agreements with agencies.

Comment Number	Comment	Response
19.4	The Procedures specify a minimum one-to-one acreage or linear foot compensation ratio will be used to determine the amount of compensatory mitigation necessary to offset environmental losses. CDFW agrees, as the State Water Board Staff Report accompanying the Procedures states, that the appropriate amount of compensatory mitigation varies depending on whether the mitigation project is fully established, the time required to develop a full range of functions, the level and type of any anthropogenic degradation, locational factors, likelihood of success, and the level of aquatic function being impacted. In CDFW's experience, it would be extremely rare for less than a one-to-one ratio to apply and a significantly higher ratio of compensatory mitigation generally is required to offset the known reduced environmental efficiency of mitigation wetlands, to avoid the reduction of wetland acreages at individual mitigation locations, and to ensure the attainment of the California Comprehensive Wetlands Policy "no overall net loss" goal for wetland protection.	Comment noted. See also general response #8.

Letter 20: Central Valley Joint Venture

Comment Number	Comment	Response
20.1	The application requirements for EREPs should be revised, to better recognize their critical role in restoring and enhancing wetlands, and reduce duplicative or deterrent regulatory hurdles to their accomplishment;	See general response #5.
20.2	The definition of an EREP should include local agencies that have a primary function of managing wetlands, within the list of enumerated agencies and organizations who administer wetland enhancement, restoration, and establishment agreements; and	The suggested revisions to the EREP definition align with the Water Board's goal for no net loss and a long term net gain in the quantity and the quality of wetlands. The EREP definition has been revised to allow projects undertaken in accordance with a binding stream or wetland enhancement or restoration agreement between certain qualified local agencies and a real property interest owner or an entity conducting the habitat restoration or enhancement work to qualify as EREPs. See Section V Definitions in the Procedures for specific language changes.
20.3	The SWRCB should cross-reference (for example in the staff report for the Discharge Requirements) prior water board orders and resolutions that address managed wetlands.	See response to comment #20.7 (below). The staff report already includes references to restoration projects that have been authorized by the Water Boards in prior years.

Comment Number	Comment	Response
20.4	We remain concerned, however, that other application requirements for EREPs will consume scarce staff time and financial resources, and duplicate provisions in the binding stream or wetland enhancement, restoration, or wetland establishment agreements that qualify a project as an EREP in the first place. There is also a significant potential that landowners will be deterred by the application requirements from voluntarily undertaking important wetland habitat projects. We are particularly concerned about the case-by-case requirements to provide a water quality monitoring plan, a draft restoration plan, and a draft assessment plan, as described in section A.2 (d), (e), and (f) of the application requirements (Discharge Procedures p. 7). [In text language suggested omitted.]	See general response #5. The Procedures were not revised in response to this comment. It is recognized that some binding agreements for the restoration of provisions may be submitted in an assessment plan to satisfy application requirements, including provisions for monitoring and reporting. The Procedures require Ecological Restoration and Enhancement Projects to submit a draft assessment plan that includes project objectives, performance standards, protocols for condition assessment, the timeframe and responsible party for performing the condition assessment, and an assessment schedule. The plan must include at least one assessment of the overall condition of aquatic resources and their likely stressors, before and after any restoration or enhancement. Water Board staff fully support voluntary wetland restoration and enhancement efforts, and strive to encourage such activities, not impede them. Many restoration projects by their very nature involve substantial filling or dredging of wetlands and/or state waters. Generally, the long-term benefits to the aquatic resources from these projects far outweigh any short- term impacts, but this often depends on how the project is done, when it is done, where it is done, who is doing the restoration and/or enhancement, and for what ultimate purpose. The draft assessment plan will provide better data regarding the project's success.

Comment Number	Comment	Response
20.5	The proposed definition of an EREP requires that projects be under a binding stream or wetland enhancement, restoration, or wetland establishment agreement that is executed between the landowner and: (1) an enumerated state or federal resource agency, (2) another federal or state resource agency, or (3) a non-governmental conservation organization. In California, however, there also exist a handful of local public agencies whose jurisdiction and mission are specific to wetland protection and enhancement. These local agencies should also be eligible to hold a qualifying agreement with landowners for EREP projects.	See response to comment #20.2 (above).
20.6	Wetland-specific local agencies are qualified to enter into agreements with landowners for enhancement, restoration, or establishment of wetlands. Similar to other binding EREP agreements, they should be included in the list of qualifying projects. We request the following modification to this excerpt from the definition of an EREP project (Discharge Procedures, p. 14): [In text language suggested omitted	See response to comment #20.2 (above).

Comment Number	Comment	Response
20.7	Finally, the SWRCB's findings, staff report, or other formal written materials associated with the Discharge Requirements should include a discussion of the principals articulated in previous state and regional water board orders and resolutions regarding managed wetlands. We believe that the consideration and adoption of the proposed Discharge Requirements provides a unique opportunity for the SWRCB to underscore prior findings about the importance and regulatory status of managed wetlands. The policies underlying these findings will help guide the SWRCB and the Regional Water Quality Control Boards when implementing the Discharge Requirements. Referencing previous orders and resolutions will also help ensure consistency across multiple SWRCB regulatory programs that apply to managed wetlands. We request the following discussion be included in the final staff report or similar document related to the Discharge Requirements: [In text language suggested omitted.]	The Staff Report has not been revised in response to this comment. Section 5 of the Staff Report includes a discussion on EREPs, including those previously certified by the Water Board. Managed wetlands may qualify as Ecological Restoration and Enhancement Projects (EREPs) if they meet certain criteria. EREPs include projects undertaken by state and federal agencies, or non-governmental conservation organizations. The EREP definition restricts other proposed projects to those with binding agreements with agencies. Because additional agency review and oversight is provided through the agreements, a number of application requirements are limited in the Procedures for EREPs to avoid regulatory redundancy and associated cost. Projects not meeting the EREP definition will be subject to the standard application requirements.

Letter 21: Chess

Comment Number	Comment	Response
21.1	I am writing to support the proposal to repeal the 2015 Waters of the United States ("WOTUS") rule.	Note that the Procedures do not purport to repeal the 2015 Clean Water Rule.
21.2	Yet the 2015 WOTUS rule is overly broad and creates heavy burdens and costs, legal risk and tremendous uncertainty for farmers, ranchers and others, like me, who depend on the land. Under the 2015 rule, farmers, ranchers, and other landowners across the country face new roadblocks to ordinary land-use activities. The agencies should repeal the 2015 Waters of the United States ("WOTUS") rule that was stayed by federal courts due to its legal flaws and violations. Challengers raised numerous substantive and procedural defects in the rule, including that the rule exceeds EPA's statutory authority, imposes burdensome regulatory uncertainty, was finalized in violation of mandatory procedural requirements designed to ensure a well-informed result, and is otherwise unlawful.	Note that the Procedures do not purport to repeal the 2015 Clean Water Rule.
21.3	The agencies should move forward, withdraw the rule, and then go back to the drawing board and write a new rule that protects water quality without compromising the rights of farmers and ranchers, landowners, businesses, and the states.	Note that the Procedures do not purport to repeal the 2015 Clean Water Rule.

Letter 22: City of Petaluma

Comment Number	Comment	Response
22.1	The City of Petaluma is concerned that the proposed regulations will add significant cost and time delays in permitting flood control and public works projects. It is requested that this language be more definitive on the requirements of the permits, leaving less up for interpretation, and that the overlap with other agencies is fully explored and redundant requirements be omitted.	The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California's aquatic resources. Also, see general response #6 and 10.
22.2	The City of Petaluma would also like to ensure artificial wetlands constructed and currently used and maintained for disposal or re-handling of dredge spoils are excluded from being classified as waters of the state.	If the wetland areas the commenter is referring to is artificial and is currently used and maintained primarily for one or more of the purposes outlined in section II.3.d of the Procedures then it would not be considered a water of the state.

Letter 23: City of San Diego

Comment Number	Comment	Response
23.1	Additionally, the City encourages the State Water Board to include a fourth issue- streamlining the regulatory review and permit decision process. This can be accomplished by incorporating consistency between local, state, and federal regulations, where possible. Several examples are provided in the attached table. A complicated and cumbersome regulatory process negatively affects California's economy and the government's ability to provide essential public services.	Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof and will help ensure consistency across water board regions. In addition, in developing the Procedures, the State Water Board has attempted to make the Procedures as consistent as possible with the requirements of the Corps. Where the requirements are the same, the Procedures allow for a streamlined process. For example, where the applicant's federal license or permit application includes any of the project application submittals, the applicant may submit the federal application to satisfy the corresponding state application. However, because the State Water Board and the Corps have different jurisdictional bounds and different statutory mandates, there are some instances in which the State requirements differ from federal requirements. Likewise, given the different jurisdictions and statutory mandates, there may be some instances in which the Procedures' requirements different from requirements set forth by the California Department of Fish and Wildlife.

Comment Number	Comment	Response
23.2	Development of these Procedures is stated to be based on three issues, and the City strongly recommends that a fourth issue be added to address the regulatory review and permit decision processes.	See response to comment #23.1 (above).
23.3	The Procedures continue to define "waters of the state (WOTS)" broadly, and the Staff Report makes clear that the State will exercise broad, undefined discretion in determining the extent of WOTS. As stated in the public comments on the 2016 draft Procedures, this broad, undefined authority places a significant burden on the regulated community. By failing to include a clear-cut definition of WOTS, the draft Procedures still do not provide certainty to landowners and municipal agencies. As a frequent applicant to the San Diego Regional Water Quality Control Board (San Diego Water Board) for Section 401 water quality certifications, the City would still be subject to a case-by-case evaluation of whether a particular resource is considered WOTS. Such uncertainty and broad discretion given to Water Board staff to determine the extent of WOTS on a case- by-case basis, is untenable to the regulated community as it lacks predictability, transparency, or consistency. Wetland Waters of the State: The City appreciates the State Water Board's revisions to the Procedures, which now include additional parameters/guidelines for when a wetland feature will also be considered a WOTS. However, the City remains concerned that the Procedures provide too much discretion and are too ambiguous for	See general response #11. Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. It is not expected that these delineations will diverge greatly from what is already being prepared for the Corps. Applicants are encouraged to contact the appropriate Water Board for consultation on determining jurisdiction. Definitions and delineation procedures for non-wetland aquatic features, such as streams, have not been addressed in this version because it is outside of the scope of the project and would add significant delays for adoption of the Procedures. Delineation reports should be provided by the applicant and verified by Water Board staff. Water Board staff will rely on determinations made by the Corps when identifying waters of the U.S. and applicants should use the same wetland delineation procedures for identifying wetland waters of the state that are outside of federal jurisdiction.

Comment Number	Comment	Response
	what wetlands qualify as WOTS. At the August 10 workshop, Water Board staff explained that a clear cut and all-encompassing definition for WOTS has not and will not be put forth, and determinations will continue to be made on a case-by-case basis. This may cause permitting delays for routine and minor City projects as Section II.4.c of the Procedures identify that artificial wetlands that "[have] resulted from historic human activity and [have] become a relatively permanent part of the natural landscape" qualify as WOTS. [In text language suggestion was omitted] Additionally, the Water Board should replace the currently proposed wetland definition with the existing federal wetland definition and guidelines, which are utilized by the Army Corps of Engineers (ACOE) and the Environmental Protection Agency.	In addition, the suggested change to the definition of waters of the state was not made. The suggested edit would require an amendment to the Porter-Cologne Water Quality Control Act, which would need to be done by the State Legislature. Also see general response #4 in regards to the Corps' wetland definition.
23.4	If the Water Board does not replace the definition as suggested, at minimum, a definition should be provided for the term "relatively permanent" as it relates to artificial wetlands described in Section II.4.c of the Procedures.	See general response #2.
23.5	The primary stated goal of the draft Procedures is to ensure that isolated waters that may lack federal jurisdiction are still protected under state law. The proposed definition unnecessarily and inappropriately classifies areas as wetlands that do not meet the federal definition and are not necessarily isolated.	See general response #4.

Comment Number	Comment	Response
	While these areas may be considered WOTS, classifying them as wetlands confers additional sensitivity to resources that may provide only limited functions and services based on the presence of only two of the three wetlands criteria. At the August 10 workshop, Water Board staff explained that that the wetland definition in the Procedures was "effectively the same" as the federal wetland definition, when amendments and case law are considered. The City believes it would be clearer and more effective to adopt the same wetland definition that is used by the federal government in order to avoid any future disagreements or complications. This issue could result in disagreements between federal and state agencies requiring wetland delineations that address both state and federal definitions. This could result in significant delays for City priority projects. The City supports adoption of a wetland definition that is consistent with the current federal definition.	
23.6	The Procedures state that "If an aquatic feature meets the wetland definition, the burden is on the applicant to demonstrate that the wetland is not a water of the state." Additional guidance is needed to clarify the intent of this statement. Section II of the Procedures should include additional guidance related to this statement and how an agency would go about demonstrating to the State Water Board that an aquatic feature is not a WOTS.	The Procedures provide a jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. The jurisdictional exclusions rely upon facts that the applicant will be in a better position to provide than the State Water Board; therefore, it is appropriate that the burden of proof falls on the applicant to demonstrate that the exclusion applies.

Comment Number	Comment	Response
23.7	Item f requires quantification of impact to the nearest one-thousandth (0.001) of an acre. This is an unnecessary requirement and differs from standard practice within the industry. One-thousandth of an acre is approximately 40 square feet (or roughly a 6-foot by 6-foot area). Standard rounding to the nearest one- hundredth would adequately account for impacts since, in roughly half of the cases, impacts would be rounded down and in half of the cases impacts would be rounded up. Tracking and accounting for impacts and mitigation to the nearest one thousandth of an acre places an undue regulatory burden on applicants and the Water Boards. The City supports quantification and tracking to the nearest one hundredth (0.01) of an acre in accordance with standard industry practice. [In text language suggestion was omitted]	The specification to round to the nearest 0.001 acres was added at the request of an earlier commenter to more precisely characterize impacts for small projects. This language has been revised. The quantity of impacts to waters proposed to receive a discharge of dredged or fill material at each location shall be rounded to at least the nearest one-hundredth (0.01) of an acre. This revision retains the allowance for applicants to round impacts to a smaller quantity (one-thousandth (0.001) of an acre), to more precisely characterize impacts related to dredge or fill activities. This impact measurement is necessary for determining fees, analyzing the level of threat and complexity, and determining the amount of required compensatory mitigation, if applicable.
23.8	Item g requires an alternatives analysis with only a very narrow list of exemptions and a tiered approach to determine the type of analysis required for different size/type projects. While this is an improvement to the case-by-case determination in the 2016 draft Procedures, as nearly all projects would be subject to an additional regulatory review process that is not currently in place and is not implemented by the California Department of Fish and Wildlife or US Army Corps of Engineers for similarly sized projects, this places an undue burden on the City.	See general response #1.

Comment Number	Comment	Response
	The City supports the current guidance for the federal process relative to alternatives and Least Environmentally Damaging Practicable Alternative (LEDPA) determination and requests that instead it includes avoidance, minimization and mitigation discussions to ensure consistency in the process. [In text language suggestion was omitted]	
23.9	Under existing federal regulation, projects with impacts under one-half (0.5) acre generally qualify for a Nationwide Permit (NWP) and are not required to complete an alternatives analysis because those impacts are considered minimal. As proposed, for a typical project that qualifies for an NWP, the City expects that permitting costs under the draft Procedures would increase by 50-150% if an alternatives analysis is required by the Water Board. It is unclear that such an additional administrative burden is necessary to protect WOTS given that projects that qualify for NWPs are, by definition, limited in scope and scale and cumulatively result in minimal adverse impact to aquatic resources. The only justification for a state LEDPA analysis, when no federal LEDPA analysis is being conducted, is in cases where the application involves impacts to significant areas of non-federal waters. [In text language suggestion was omitted]	See general response #1. The Procedures state that the level of effort for the alternatives analysis should be commensurate with the significance of the impacts resulting from the discharge.

Comment Number	Comment	Response
23.10	The use of 100 and 300 linear foot limits within tiered framework will result in the majority of projects being required to provide a Tier 3 analysis. Channel maintenance projects to manage storm water conveyance systems are particularly affected because impacts are often larger than 300 linear feet due to the pre-existing shape of the facility. While the draft Procedures include recognition of projects "that inherently cannot be located at an alternate location," the draft Procedures do not define how this will be determined. The analogous federal regulation is 40 CFR Section 230.10(a)(3), which states that offsite alternatives are required to be analyzed unless the activities "requires access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose." In practice, determining that an activity is water-dependent under federal regulation is highly limited. As such, the City requests clarification regarding the criteria that Water Board staff would use to determine if a project inherently cannot be located at an alternate location. Storm water management and maintenance projects should be explicitly included in the criteria since off-site alternatives are cost-prohibitive in nearly every case. Section IV.A, Items 1.g and 1.h of the Procedures should be revised to include additional language or a footnote that provides criteria that Water Board staff would use to determine if a project inherently cannot be located at an alternate location. Storm water management	See general response #1. The State Supplemental Guidelines retained section 230.10(a)(3) that is referenced in the comment.

Comment Number	Comment	Response
	and maintenance projects should be explicitly included in the criteria since off-site alternatives are cost prohibitive in nearly every case.	
23.11	The case-by-case requirement for climate change assessment should include criteria that would be used by Water Board staff to determine or justify why an assessment is required. This would help the regulated community anticipate when an assessment may be required and assist in communication with Water Board staff regarding the basis and the potential nexus between the project and potential affects from climate change. [In text language suggestion was omitted]	See general response #7.
23.12	The Procedures identify that, if project activities include in-water work or water diversions, a water quality monitoring plan may be required on a case-by-case basis for a project application to be considered complete. Many of the City's routine channel maintenance projects involve in-water work or water diversions, and as such, this requirement would be overly burdensome for routine channel maintenance projects intended to reduce potential flooding and improve safety. The City strongly urges the Water Board to consider adding an exemption from this application requirement for linear routine maintenance projects conducted to maintain the original purpose or hydraulic capacity of a linear facility. This is consistent with existing exemptions found in the Construction General Permit (General Permit) (Order No. 2009-0009-DWQ). [In text language	The Procedures allow the permitting authority to require an applicant to submit a draft water quality monitoring plan if project activities include in-water work or water diversions on a case-by-case basis where the permitting authority determines that the activities could cause water quality impacts. This requirement will assist applicants in complying with regional water quality control plans and thus avoid delays in application review. Applicants may work with the Water Boards in developing draft water quality monitoring plans. Accordingly, the Procedures were not revised in response to this comment.

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	suggestion was omitted]	
23.13	The proposed requirement for analysis of direct, secondary (indirect), and cumulative impacts on the physical, chemical, and biological elements of the aquatic ecosystem is an extensive and excessively burdensome degree of analysis considering the requirement is placed on nearly all projects, with very few exemptions, including impacts to less than 0.1 acre or 100 linear feet. Such extensive analysis should be reserved for projects with large impacts (greater than 0.5 acre or more) that do not qualify for a Nationwide Permit. In these cases, such analysis will likely be required by the US Army Corps of Engineers and can occur concurrently and in collaboration with state review. As proposed, this detailed analysis would require extensive expenditures on the part of applicants to, for example, provide analysis of chemical constituents that may indirectly be affected by a proposed activity, as opposed to the current and common practice of using physical and biological mapping of jurisdictional resources as a sufficient surrogate to assess most potential impacts.	See general response #1. The Procedures state that the level of effort for the alternatives analysis should be commensurate with the significance of the impacts resulting from the discharge.

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23.14	Section IV.B, Item 4.c of the Procedures should explicitly state that HCPs and NCCPs will be accepted in lieu of a watershed plan. The City supports provisions that recognize existing plans may be approved as watershed plans. The City strongly objects that only Special Area Management Plans or new watershed plans are allowed to qualify as approved watershed plans. As stated in the Staff Report, it is not the intention of the Water Boards to create watershed plans, and if something other than the MSCP Subarea Plan is required within the City of San Diego, it would place a significant burden on government resources. Because the MSCP accounts for wetlands resources, any new plan(s) required by the Water Board to meet the standards in the Procedures would not necessarily result in improved land use regulations and would be an unnecessary expenditure of public resources.	The Procedures were revised in response to this comment. The Procedures state that the Water Boards may approve the use of HCP and NCCPs, as well as other types of plans, as watershed plans. One of the goals of the Procedures is to streamline permitting processes; therefore, the wetland definition was revised to recognize certain existing NCCPs and HCPs for use as watershed plans, subject to certain conditions. Please refer to the definition of a watershed plan in Section V Definitions.
23.15	Regarding mitigation plans, per the Procedures, the permitting authority may include as a condition of an order that final approval of the mitigation plan be received prior to the discharge of dredge or fill material. This section also requires that the permitting authority approve the final mitigation plan by amending the order. In the City's experience, permit amendments are generally a lower priority for local RWQCB staff compared to other permit applications. Amendment requests may have no action for a year or more even for minor modifications. If the approval of	The Procedures have been revised in response to this comment. It is the goal of the Water Boards to work with the applicant during the application review stage. Generally, compensatory mitigation plans are approved by issuance of an Order. This is to ensure that compensation for adverse impacts to waters of the state are well thought out and compensatory mitigation projects are successful. The Procedures have been revised to clarify that if the applicant does not provide a final compensatory mitigation plan prior to issuance of an Order, and the applicant is in compliance with CEQA, the Water

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	the mitigation plan is by amendment, but permitting authority does not have the staff to issue the amendment, this could unnecessarily delay projects and add costs due to project delays. [In text language suggestion was omitted]	Boards will include a condition in the Order requiring final approval of a mitigation plan prior to commencement of work in waters of the state. In these cases, the Water Boards will also include as a condition of the Order a specific process for approving the final compensatory mitigation plan.
23.16	This section discusses that discharges of dredge/fill when associated with routine maintenance of storm water facilities regulated under another Water Board Order would be excluded from these procedures. Please clarify if this includes all storm water facilities, including those identified in Municipal NPDES Storm Water permits which typically require maintenance of the entire municipal storm water system including drains, open channels, pipes, etc. [In text language suggestion was omitted]	Because the jurisdictional scope and purpose of NPDES permits and dredge and fill orders are different, the Procedures do not grant a procedural exclusion to all waters covered by an NPDES MS4 permit; however the Procedures have been revised to provide some regulatory relief to such facilities if they meet certain conditions. The Procedures have been revised to exclude artificial wetlands that were constructed and are currently used and maintained for the purpose of "detention, infiltration, or treatment of stormwater runoff and other pollutants or runoff regulated under a municipal, construction, or industrial stormwater permitting program" (section II.3.d.iii). Section IV.D.1.c of the Procedures has also been revised to exclude certain operation and maintenance activities in stormwater conveyance facilities that may include the facilities described in this comment. = Also see general responses #2 and #12.

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23.17	At the August 10 workshop, Water Board staff explained that several initiatives, outside the scope of and separate from the procedures, are underway that are intended to improve the permit application, review, and approval process so that it is uniformly administered throughout the State and is streamlined and expedited. One of the initiatives identified by Water Board staff is to approve additional Section 401 Water Quality certifications for General Permits established under Section 404. The City has a broad array of mandates and responsibilities, including a wide range of maintenance duties within jurisdictional resources, which typically require intensive staff time and coordination in order to obtain permits. The City strongly supports the effort and initiatives to streamline and expedite the permit process, including the additional certifications. The Water Board should continue to pursue, and expedite where possible, the approval of additional Section 401 Water Quality certifications for Section 404 General Permits.	The commenter's support of the State Water Board's initiatives to certify Corps general permits and to streamline the application process is noted. The State Water Board has historically certified a limited number of nationwide permits that qualify as CEQA exempt. For non-CEQA exempt projects, there are currently insufficient resources to complete a full CEQA review in a limited amount of time for all classes of activities covered under approximately 50 nationwide permits for impacts in all areas of California. For Corps' general permits that are not nationwide permits, the commenter should contact the appropriate regional water quality control board (or the State Water Board if the permit area falls within the jurisdiction of more than one regional water quality control board) to request coordination for the certification of Corps general permits. Coordination would include the proper compliance with the California Environmental Quality Act (CEQA).
23.18	Clarify the definition of "ecologically meaningful unit" when determining the project evaluation area. In addition, basing the determination of the ecological meaningful unit on a "reasonable rationale" further complicates the process. The definition of this concept is unclear, vague and seemingly subjective. The lack of clarity is strongly related to the evaluation of the effects of	The Procedures were not revised in response to this comment. Due to the variety of project sizes that are certified through the water quality certification program, it would be inappropriate to define one standard 'ecologically meaningful unit' in an attempt to cover the scope of all individual project areas. Projects can range in size from replacing a small culvert, therefore only needing a

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	the project and /or compensatory mitigation. In addition, it is unclear if Board staff determine the evaluation area or if the applicant proposes the extent of the evaluation area. If the applicant proposes the extent, the City recommends the Board include a discussion of the amount of effort needed to determine the project evaluation area and/or provided an example for review and comment. The Project Evaluation Area definition in Section V. of the Procedures should be revised to clarify the meaning of "ecologically meaningful unit." The Water Board should also provide an example of an applicant proposed project evaluation area for review and comment.	small watershed profile, or renewable transmission lines that could span many miles. Generally, the applicant should use the same evaluation area used when evaluating the project under CEQA. Best professional judgment should be applied when determining a project evaluation area.
23.19	As proposed, the definition of a watershed profile related to the extent of the project evaluation area is unclear. The City appreciates the suggestion that the scope of the project profile should be commensurate with the magnitude of project impacts but also has concerns that, as proposed, the submittal of the profile should include a map and a report, which will potentially contribute to delays in processing. The Watershed Profile definition in Section V. of the Procedures should be revised to clearly identify the required parameters and extent of a watershed profile.	The Procedures have not been revised in response to this comment. An applicant would need to define a project evaluation area large enough to show that the aquatic resource impacted by the project would be replaced through the successful implementation of the mitigation. Thus, the size of the project evaluation area will be based on factors such as the size and types of impacts and the aquatic resource restoration type and location and will vary greatly depending on these factors. As further stated in the definition of a watershed profile, sources of information for a watershed profile include "online searches, maps, watershed plans, and possibly some fieldwork if necessary." Generally, the applicant should use the same evaluation area used when evaluating the project under CEQA. Best

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		professional judgement should be applied when determining a project evaluation area.
23.20	The City has significant concerns with the portions of the federal Subpart J – Compensatory Mitigation for Losses of Aquatic Resources that are excluded under the proposed state Procedures. These exclusions include those sections that provide definitions and processes to establish advanced mitigation credits such as through the establishment of mitigation banks, in- lieu fee programs, or Advanced Permittee-Responsible Mitigation (APRM). The Water Board seems to be taking the position that Regional Boards will not participate in Interagency Review Team (IRT) and will not explicitly approve the establishment of advanced mitigation credits by excluding these sections. Instead, such credits may be used on a case-by- case basis, but in contradiction to federal regulation, under the proposed state Procedures there is no clear hierarchical preference for mitigation banks. Advanced mitigation credits are a critical method of providing compensatory mitigation. The City, in particular, has invested in establishing a Memorandum for the Record (MFR) with the US Army Corps of Engineers to provide APRM and intends to use this instrument for the majority of future City projects. This approach is based on federal regulations which provide a clear preference for	Section 230.98 of Subpart J was removed because it refers to the Corps' authority and requirements for the approval of the creation and administration of mitigation banks and in-lieu fee programs that provide credits for impacts to waters of the United States. The removal of this section does not preclude participation by the Water Boards on interagency review teams. As staff resources allow, both State and Regional Water Board staff participate in various inter-agency review teams that evaluate and approve mitigation banks and in-lieu fee programs. Additionally, the Water Boards may continue to approve of the use of mitigation banks or in-lieu fee programs as mitigation where appropriate. We agree with the commenter that larger, comprehensive advance mitigation efforts generally result in greater protection of, and improvement to, aquatic resources. Advance mitigation efforts also eliminates temporal losses of aquatic resource functions and facilitates faster permitting and project delivery. The Water Boards therefore support an advance, region- wide, and comprehensive approach to providing compensatory mitigation, and Water Board staff participates in several such efforts throughout California.

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	advance credits, based on an ecological justification that such credits result in greater protection and improvement to aquatic resources. The State Board's reticence to participate in the establishment of advanced credits and to instead defer to case-by-case evaluations by staff significantly reduces the state's ability to protect and improve aquatic resources. Instead of being able to invest in large, advance mitigation projects with the certainty that resulting credits will be accepted by all regulatory agencies, applicants, including the City, are subject to future case-by-case evaluation which may determine that such advance credits are not preferred over project-by- project mitigation. Appendix A, Subpart J of the Procedures should be revised to incorporate the currently excluded portions of the federal regulation, so that the same preference for advance mitigation credits is established at the state level and that the Regional Boards have clear regulations that allow them to participate in IRTs and approve advance mitigation credits.	Please note that the proposed Procedures ***do*** state that mitigation banks and in-lieu fee programs are generally preferred over permittee-responsible compensatory mitigation. Subpart J (Compensatory Mitigation for Losses of Aquatic Resources), § 230.93 (a) states: "In many cases, the environmentally preferable compensatory mitigation may be provided through mitigation banks or in-lieu fee programs because they usually involve consolidating compensatory mitigation projects where ecologically appropriate, consolidating resources, providing financial planning and scientific expertise (which often is not practical for permittee-responsible compensatory mitigation projects), reducing temporal losses of functions, and reducing uncertainty over project success." However, mitigation banks and in- lieu fee programs are not available everywhere in the state, and in some cases permittee-responsible mitigation provides the environmentally preferable outcome.

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23.21	The City strongly supports the flexibility in monitoring periods to allow the permitting authority to reduce or waive remaining monitoring requirements upon a determination that the mitigation has achieved performance standards. Conversely, the City understands the need to extend monitoring periods when a site is not meeting standards, but would appreciate more explanation of cases when sites do not meet criteria, which may be natural ecological factors that change beyond the applicant's control. Appendix A, Subpart J, of the Procedures should be revised to include additional discussion on procedures available to applicants in cases when sites do not meet criteria.	We appreciate the acknowledgement that the Procedures contain appropriate flexibility in regard to monitoring flexibility. The approach to be taken by the permittee for unforeseen changes in site conditions is addressed in the adaptive management plan submitted by the permittee as part of the compensatory mitigation plan (see section 230.94(c)). This allows for consideration of events in the specific region that may have occurred historically such as fire and floods.

Letter 24: City of Santa Maria

Comment Number	Comment	Response
24.1	The City of Santa Maria ("City") operates a Municipal Separate Storm Sewer System ("MS4") that includes several ditches and detention basins. The City would like to perform maintenance on these MS4 facilities but is concerned about potential Clean Water Act liability if these facilities were considered to be Waters of the United States ("WOTUS"), and State liability if this stormwater infrastructure is deemed Waters of the State ("WOTS") and must meet requirements in the new policy.	The State Water Resources Control Board determined that all waters of the U.S. are also waters of the state by regulation, prior to any regulatory or judicial limitations on the federal definition of waters of the U.S. This regulation has remained in effect despite subsequent changes to the federal definition. Therefore, waters of the state includes any features that have been determined by the U.S. EPA or the U.S. Army Corps of Engineers to be "waters of the U.S." In regards to MS4 facilities that do not meet the definition of a water of state in section II of the Procedures, see general responses #2 and #12.
24.2	The City realizes that capture and storage of even more stormwater may eventually require more detention basins that will be wetted lands. These areas are not the same as a "wetland" since any wetted areas in municipal detention basins are clearly a "stormwater detention basin" and, therefore, these areas should be deemed non-jurisdictional areas under the Clean Water Act and under this proposed policy. The City is currently working with the Army Corps to confirm that these areas are indeed not jurisdictional WOTUS so that these important maintenance activities may proceed. The City is concerned, however, that similar and equally problematic requirements will come out of the new proposed state wetlands and	See general response #2.

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	dredge and fill policy proposed for adoption.	
24.3	The new rule should have express exemptions for stormwater features such as MS4 ditches and detention basins covered by MS4 permit provisions. Exemptions should also exist for any waterways regulated by the Department of Fish and Wildlife Streambed Alteration Program to avoid duplicative and potentially contradictory regulatory requirements. These exemptions are vital as the City and other municipalities are proactively trying to incorporate resiliency and stormwater capture and reuse into its plans for future droughts.	The procedural exclusions set forth in section IV.D have been revised, and may include some of the types of features referenced in this comment. Because the jurisdictional scope and purpose of NPDES permits and dredge and fill orders can be different, the Procedures do not grant a procedural exclusion to all detention basins covered by an NPDES MS4 permit. See general response #10 and response to comment #24.1 (above).

Letter 25: Clarke, Mary

Comment Number	Comment	Response
25.1	I am writing to express my support for the proposed Statewide Wetlands Policy Regulation an urge the Board to support this regulation, with two changes, as stated below. California has lost over 90 percent of its historic wetlands, and we need strong and clear regulations to prevent further harm, protect what remains, and restore what was lost. As you know, wetlands provide many essential benefits, including habitat for wildlife, especially endangered, threatened, and other sensitive species. Wetlands improve water quality by filtering water. They can provide key protections from the rising ocean levels that climate change will brings. Those of us in the environmental community are discouraged and extremely disappointed that the Trump administration has acted to roll back Federal protections for wetlands. Due to these regressive steps at the Federal level, we urge the State to all that it can to protect our wetlands.	The commenter's support for the Procedures is noted. See response to specific comments below.
25.2	I support the proposed regulation with two changes: 1) It is urgent that the[re] be no further loss of wetlands. Therefore, under the new "compensatory mitigation policy," it should be made clear that every wetland acre destroyed or degraded must be mitigated by at least one acre of newly restored or created wetlands, to ensure no net loss of wetlands.	See general response #8.

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25.3	2) An Alternatives Analysis should be required for every project that impacts wetlands. The proposed policy states that a Regional Water Board can ignore the Alternatives Analysis for any project without providing a reason. To do so would allow wetlands destruction to continue as before. Please insure that an Alternatives Analysis is required for every project that impacts wetlands.	See general response #1.
25.4	The State Water Resources Control Board stands in a unique position to lead in the face of the Federal retreat to protect wetlands. I urge you to use your authority to adopt the proposed statewide wetlands policy regulation, with the town changes addressed above.	Comment noted.

Letter 26: Contra Costa County Public Works Department and Flood Control and Water Conservation District

Comment Number	Comment	Response
26.1	We appreciate that the Proposed Procedures were revised to allow applicants to identify impacts to a thousandth of an acre. This will allow us to more accurately characterize our impacts which are often very small. We would again recommend that impacts WOTS below 0.05 acre be considered non-reporting and not subject to permitting approvals or mitigation.	Note that the rounding of impact quantities in section IV.A.1.f has been revised. The quantity of impacts to waters proposed to receive a discharge of dredged or fill material at each location shall be rounded to at least the nearest one-hundredth (0.01) of an acre. This revision retains the allowance for applicants to round impacts to a smaller quantity (one-thousandth (0.001) of an acre), to more precisely characterize impacts related to dredge or fill activities. This impact measurement is necessary for determining fees, analyzing the level of threat and complexity, and determining the amount of required compensatory mitigation, if applicable. The Procedures were not revised in response to the comment regarding projects with impacts to waters of the state below 0.05 acre. As discussed in section 6.7 of the Staff Report, projects with minimal impacts (Tier 1 projects) only need to describe Water avoidance and minimization measures. Tier 1 includes projects with impacts less than or equal to 0.1 acre.

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		6.7 of the Staff Report, projects with minimal impacts (Tier 1 projects) only need to describe Water avoidance and minimization measures. Tier 1 includes projects with impacts less than or equal to 0.1 acre. As explained in general response #1, approximately 55 percent of projects authorized by the Boards in the past three years had impact sizes less than or equal to 0.1 acres. The analysis also found that between 40 and 46 percent of projects had impact sizes less than or equal to 0.05 acres (0.04 acres represented 40 percent, and 0.06 acres represented 46 percent). The analysis looked at a total of 2,990 projects over three years. Therefore, cumulatively, these projects represent a significant impact that would be inappropriate to address through a non-reporting permit.

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26.2	It is unclear what type of analysis is required for Tier 3 projects that impact more than 0.2 acre and is a project that inherently cannot be located in an alternate location. We recommend that this be clarified, that only an analysis for on-site alternatives be required, and that all on-site alternative analysis be limited to accepted engineering practices.	Any project that cannot be located at an alternate location falls within Tier 2 requiring an analysis of only on-site alternatives, unless the project meets the size requirements set forth in Tier 1.
26.3	Lines 570-578 imply that minor or routine maintenance activities are not likely to result in significant degradation to the aquatic environment. Additionally several sections of the Proposed Procedures suggest that compensatory mitigation be commensurate with the impact. However, it is left up to the permitting authority on a project-by- project basis to determine if compensatory mitigation will be required, which is unsettling to agencies whose mission it is to maintain flood control facilities and public infrastructure. If mitigation is required, the potential for additional studies is extensive and could result in costly and time consuming efforts. It is extremely important that permitting authorities understand and consider the responsibilities and limitations of flood control and public infrastructure with limited resources. We continue to recommend that routine operation and maintenance of existing facilities should be exempt from compensatory mitigation under the Final Procedures provided that the activities return the facility to the intended operational condition and it can be shown that measures are incorporated to reduce temporary impacts.	Compensatory mitigation requirements are determined on a project-by-project basis and are based the applicant's ability to demonstrate that they have taken a sequence of actions to first avoid, then to minimize, and lastly compensate for adverse impacts to waters of the state. Compensatory mitigation ensures that there is no net loss to California's aquatic resources and that the beneficial uses of water resources now present are maintained for future generations. For this reason, projects that are carried out for public safety or emergency response, which may include flood control facilities, must still comply with this mitigation sequence. Note that several of the Corps' Regional General Permits for emergency situations have already been certified and those permits include provisions allowing for compensatory mitigation on a case-by-case basis.

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26.4	The majority of potential requirements are to be determined on a case by case basis. Although the flexibility allows for consideration of the unique aspects of each project, it creates uncertainty for the permittee and does not facilitate the consistency the Proposed Provisions seek to achieve. We request clear acknowledgment in the Final Procedures that low impact projects should not trigger the optional additional information required for a complete application, and we appreciate any efforts by the State and Regional Boards to consider a projects' scale in their regulatory process.	See general response #7.
26.5	The Proposed Procedures suggest the State and Regional Boards can require wet weather delineations if they believe there is a reason to do so. This requirement could add considerable time to a project's schedule and we believe it is unwarranted. The science of delineating wetlands relies on hydric indicators that are present regardless of season.	See general response #7.

Letter 27: Cordes, John

Comment Number	Comment	Response
27.1	Protecting and restoring California's wetlands should be a priority because of the major role they play in ecosystem health.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

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27.2	Please adopt the new Wetlands Rule.	The commenter's request to adopt the Procedures is noted.

Letter 28: County of Los Angeles Department of Public Works

Comment Number	Comment	Response
28.1	While the revised procedures identify various criteria to define jurisdictional wetlands, we respectfully request that specific and explicit exclusions be granted for infrastructure facilities whose purpose is to maintain and improve water quality and/or to protect the public's health and safety. This would also prevent adverse impacts to the environment by avoiding restrictions of the critical and beneficial uses of these facilities (related to flood control and water supply). As such, please consider definitive exemptions, or at the least a streamlined process, for (1) existing groundwater recharge facilities, (2) existing flood protection and water supply retention/detention basins and reservoirs, and (3) existing debris entrapment facilities.	See general response #2.

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28.2	The State Board's Response to Comments indicates that existing plans, such as Habitat Conservation Plans (HCPs) may meet the definition of a Watershed Plan. In our experience, the only stakeholder involvement for a HCP may be a public review period for the draft HCP. To ensure the continuing adequacy and safety of existing flood control and water conservation infrastructure, we ask that the State Board consider those potential Watershed Plans, such as a HCP, that follow the required public review processes also be deemed to have satisfied the stakeholder involvement requirements and in turn to be exempt from an Alternative Analysis.	Because HCPs have a formal public comment period and may involve extensive multi-agency collaboration, it is likely that the plan addresses multiple stakeholder interests, but the Water Boards must still review the watershed plan to confirm that the HCP meets all elements of the definition of a watershed plan. It is recommended that the agency leading the development of the HCP include the Water Boards in interagency collaboration to help ensure that an HCP includes the elements set forth in the Water Boards' definition of a watershed plan.
28.3	Similarly, to maintain the timely implementation of structural stormwater Best Management Practices and water quality improvement, please clarify that existing applicable Enhanced Watershed Management Programs and Watershed Management Program plans prepared under the Los Angeles County 2012 MS4 Permit meet the definition of a Watershed Plan.	Enhanced Watershed Management Program or Watershed Management Program plans will not always meet the definition of a watershed plan because these plans may be specifically focused on only storm water issues whereas the watershed plan, as defined in the Procedures, addresses a broader spectrum of issues affecting the watershed. But these plans could be used to satisfy MS4 storm water permit requirements and the Procedures' definition if they were drafted with the watershed definition in mind.
28.4	We understand that projects carried out for public safety or emergency response must still comply with the compensatory mitigation sequence of actions to first avoid, then to minimize, and lastly compensate for adverse effects to waters of the State. We would like to reiterate our concern that compensatory mitigation should not be required for operation	Compensatory mitigation requirements are determined on a project-by-project basis and are based the applicant's ability to demonstrate that they have taken a sequence of actions to first avoid, then to minimize, and lastly compensate for adverse impacts to waters of the state. Compensatory mitigation ensures that there is no

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	and maintenance of existing stormwater and/or flood control facilities as well as for actions to prevent or mitigate an emergency condition that may potentially threaten the public's health, safety, or water supply. For maintenance of existing facilities there would not be an impact to wetlands. During emergency conditions, it is important to prioritize the public welfare.	net loss to California's aquatic resources and that the beneficial uses of water resources now present are maintained for future generations. For this reason, projects that are carried out for public safety or emergency response must still comply with this mitigation sequence. Note that several of the Corps Regional General Permits for emergency situations have already been certified and those permits include provisions allowing for compensatory mitigation on a case-by-case basis.
28.5	California Department of Fish and Wildlife and United States Fish and Wildlife Service follow a similar approach to mitigation as that described in the proposed procedures. To assist us in submitting more complete applications, please clarify how the analysis by the State Water Resources Control Board typically differs from that of other agencies, such as California Department of Fish and Wildlife and United States Fish and Wildlife Service. We respect the State Board's desire and authority to reserve the right to identify compensatory mitigation and are simply reiterating the request for clear guidance on when and why additional mitigation may be required by the State or Regional Board. Whenever possible, deferring to the other agency would help eliminate potential duplicative efforts, improve the efficiency of the review process, and serve our mutual goals of environmental protection.	See General Responses # 2 and 12. In addition, the Water Boards determine compensatory mitigation requirements on a project-by-project basis, and are based on the applicant's ability to demonstrate that they have taken a sequence of actions to avoid, minimize, and compensate for adverse impacts to waters of the state. Compensatory mitigation ensures that there is no net loss to California's aquatic resources and that the beneficial uses of water resources now present are maintained for future generations. In contrast, wildlife agencies may determine compensatory mitigation requirements based on impacts to a specific species or its habitat. Section IV.B.5 of the Procedures states that, where feasible, the permitting authority shall consult and coordinate with other public agencies regarding compensatory mitigation in order to achieve multiple environmental

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		benefits with a single mitigation project. As such, the permitting authority will coordinate with other public agencies whenever possible in developing compensatory mitigation requirements. However, because the Water Boards have different statutory authorizations and different jurisdictions, it would not be appropriate to defer to compensatory mitigation in all cases.

Letter 31: Ducks Unlimited

Comment Number	Comment	Response
31.1	DU supports the SWRCB's goal of ensuring no overall net loss and long-term net gain in the quantity, quality, and permanence of wetland acreage and values. However, to accomplish this, it is critical to streamline permit processes for voluntary wetland restoration and enhancement projects. The Procedures include somewhat streamlined application process for Ecological Restoration and Enhancement Projects (EREPs) (i.e., an alternatives analysis and compensatory mitigation plan are not required). However, additional changes to the application process for EREPs are needed to avoid creating an unnecessary regulatory burden on these projects and deterring landowners from voluntarily undertaking important wetland restoration and enhancement work.	See general response #5.

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31.2	EREPs include only voluntary wetland restoration and enhancement projects that are undertaken in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement or a wetland establishment agreement between the landowner and one of several state or federal resource agencies or non-governmental conservation organizations, or directly by a state or federal resource agency. By definition, EREPs are already subject to rigorous quality control assurances by resource agencies/organizations with extensive knowledge of wetlands and an emphasis on their conservation. These projects are already subject to monitoring and reporting as required by the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement through which the project was undertaken (private lands) or through routine assessments conducted by the managing resource agency to determine progress in accomplishing habitat management objectives (public lands). Therefore, no additional monitoring or reporting should be required for these projects.	See general response #5.
31.3	Timeline. The Procedures should provide a timeline for reviewing/approving complete permit applications. Suggested language for the required timeline follows: "The Regional Water Quality Control Board (RWQCB) may make only one request for additional information in response to an application. If the prospective permittee does not provide all of the	The Procedures have not been revised in response to this comment. State regulatory timeframes pertaining to the issuance of 401 certifications are established by the California Permit Streamlining Act (PSA), California Government Code § 65920 et seq., which was enacted in 1977. The Procedures do not introduce any new requirements that would

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	requested information, then the RWQCB will notify the prospective permittee in writing within 30 calendar days of the date of receipt of the supplemental information that the application is still incomplete. The application review process will not commence until all of the requested information has been received by the RWQCB. The prospective permittee shall not begin the proposed activity until either: a) Prospective permittee is notified in writing by the RWQCB that the proposed activity may proceed under the issued permit; or b) 45 calendar days have passed since the notification of receipt of a complete application and the prospective permittee has not received written notice from the RWQCB that the proposed activity may proceed under an issued permit."	conflict with the PSA, or add elements that would extend certification timeframes. Section 65943 (a) of the PSA provides that the Water Board has 30 days in which to determine whether an application is complete, and Section 65943(b) provides an additional 30 calendar days after receipt of supplemental information. The Procedures are consistent with these requirements in that they specify that applications be reviewed for completeness within 30 days of receipt and deemed complete within 30 days of receiving all of the required items. Applicants may submit items from section IV.A.2 with their initial application to avoid waiting the additional 30-day period for Water Board staff to list items needed on a case-by- case basis. It should be highlighted that complete application requirements, listed in section IV.A.2 are frequently requested during the Water Boards' existing application review process; these requirements are not entirely new. The Procedures provide greater clarity of information necessary to make certification decisions and transparency regarding completeness determinations.
31.4	Permit Fees. The Procedures should include a fee structure for permitting projects. Knowing required fees up-front will aid in project planning and budgeting. It will take less time for RWQCB staff to review applications for EREPs than many other types of projects. Therefore, the permit fees for EREPs should be lower than for other types of	Applicants seeking coverage for a dredged or fill project are subject to the fee schedule outlined in section 2200(a)(3) of the California Code of Regulations, available online, from the State Water Board's website (http://www.waterboards.ca.gov/resources/fees/docs/fy1617_fee_schedul e.pdf)

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	projects. In addition, many of these projects are funded with grant dollars and the funding entities desire that most of those dollars be applied directly to on-the- ground restoration and enhancement activities. Also, lower permit fees for these projects will encourage voluntary wetland conservation efforts, which in turn, will help achieve the SWRCB's goal of ensuring no overall net loss and long-term net gain in the quantity, quality, and permanence of wetland acreage and values.	In addition to the fee schedule, an online calculator tool is available, and may be used to estimate project fees on the State Water Board's website (http://www.waterboards.ca.gov/resources/fees/water_ quality/docs/dredgefillcalculator.xlsm) The Water Boards support Ecological Restoration and Enhancement Project (EREP) activities. Accordingly, fees for projects meeting the EREP definition are currently subject to lower fees than other activities.
31.5	Items Required for a Complete Application - Page 4, Subsection b. As currently worded, this subsection implies that an applicant would need to be through the U.S. Army Corps of Engineers' (Corps') permitting process before the RWQCB would consider an application complete. This could significantly delay the RWQCB's review and processing of an application. This subsection should be revised to read: "If Waters of the U.S. are present, a final aquatic resource delineation report, with a preliminary or approved jurisdictional determination issued by the Corps, if available. In all cases, a preliminary or approved jurisdictional determination must be provided prior to issuance of the permit."	The Procedures were revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2) and does not require submittal of an approved or preliminary jurisdictional determination.
31.6	Items Required for a Complete Application - Page 4, Subsection e. As currently worded, this subsection implies that an applicant would be required to map all aquatic resources that may qualify as waters of the state outside the boundary of the project that could be indirectly affected by the project. This could be extremely difficult and time consuming	The Procedures have not been revised in response to this comment. Section IV.A.1.e states: "…and (2) all aquatic resources that may qualify as waters of the state, within the boundaries of the project, and all aquatic resources that *could be impacted by the project*." (Emphasis added.)

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	(e.g., would the applicant have to map an entire watershed or groundwater basin?). We suggest that mapping be required for all aquatic resources that may qualify as waters of the state that could be directly affected by the project and a qualitative description be required for all aquatic resources that may qualify as waters of the state that could be indirectly affected by the project.	Furthermore, “waters of the state outside of the boundary of the project that could be affected by the project” means any water that could be affected by the discharge of waste such that a report of waste discharge is required by Water Code section 13260.
31.7	Additional Information Required for a Complete Application - Page 6, Subsection a. Current delineation standards at the federal level do not require field data collection to be completed during a specific time of year as long as the delineator can make judgements and document conditions based on existing data to define wetland boundaries. We recommend that the federal delineation standards be accepted and the option to request supplemental field data not be left to the discretion of RWQCB staff. Such a request could substantially delay EREPs (especially if drought conditions are present).	See general response #7.
31.8	Additional Information Required for a Complete Application - Page 6, Subsection b. Clarity on what specific aspects of climate change need to be addressed in the assessment should be provided and not left to the discretion of RWQCB staff. Otherwise, applicants will not know what is expected and this requirement will not be applied consistently. An assessment of the potential impacts associated with climate change should not	See general response #7.

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	Be required for EREPs.	
31.9	Additional Information Required for a Complete Application - Page 7, Subsection e. DU concurs with the suggested revisions to this subsection that are provided in the Central Valley Joint Venture's (CVJV's) comment letter. The last paragraph in this subsection should be revised to read: "Prior to issuance of the Order, the applicant shall submit a final restoration plan. For Ecological Restoration and Enhancement Projects, the restoration or enhancement plan provided as part of the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement shall satisfy this requirement."	The Procedures were not revised in response to this comment. In the case of EREPs, the restoration plans submitted as part of applicable binding agreements with funding agencies or in compliance with the conditions of another state or federal permit *may* satisfy this requirement; however it is still subject to the Water Boards' review and approval. Also, note that many Ecological Restoration and Enhancement Projects by their very nature involve substantial filling or dredging of wetlands and/or state waters. The State Water Board recognizes that generally, the long-term benefits to the aquatic resources from these projects far outweigh any short- term impacts. However, this often depends on how and where the Ecological Restoration and Enhancement Project are done. Under the Procedures, Water Board staff will consult with other agency staff and the applicant on the details of the project, including whether or not a restoration or enhancement plan submitted as part of a binding agreement meets the criteria in section IV.A.2.d. This ensures that the project balances multiple agency priorities and is designed to achieve the greatest net environmental benefit.

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31.10	Additional Information Required for a Complete Application - Page 7, Subsection f. DU concurs with the suggested revisions to this subsection that are provided in the CVJV's comment letter. This subsection should be revised to read: "Ecological Restoration and Enhancement Projects shall provide a description of project objectives, performance standards used to evaluate attainment of objectives, the timeframe and responsible party for determining if objectives have been met, and the proposed schedule. These requirements, as well as the water quality monitoring requirements of subsection (d) above, may be met by providing copies of similar materials already produced as a requirement of the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement for the project. Monitoring and reporting to ensure that Ecological Restoration and Enhancement Projects are being managed and maintained consistent with their intended purpose shall be limited to that which is required by the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement through which the project was undertaken (private lands) or which is routinely conducted by the managing resource agency to assess progress in accomplishing habitat management objectives (public lands). These Procedures do not require any additional monitoring or reporting for Ecological Restoration and Enhancement Projects."	The Procedures were not revised in response to this comment. It is recognized that some binding agreements for the restoration of provisions may be submitted in an assessment plan to satisfy application requirements. The Procedures require Ecological Restoration and Enhancement Projects to submit a draft assessment plan that includes project objectives, performance standards, protocols for condition assessment, the timeframe and responsible party for performing the condition assessment, and an assessment schedule. The plan must include at least one assessment of the overall condition of aquatic resources and their likely stressors, before and after any restoration or enhancement. Many restoration projects by their very nature involve substantial filling or dredging of wetlands and/or state waters. Generally, the long-term benefits to the aquatic resources from these projects far outweigh any short-term impacts, but this often depends on how the project is done, when it is done, where it is done, who is doing the restoration and/or enhancement, and for what ultimate purpose. The draft assessment plan will provide better data regarding the project's success. In the case of EREPs, an assessment plan submitted as part of applicable binding agreements with funding agencies or in compliance with the conditions of another state or federal permit *may* satisfy this requirement; however it is still subject to the Water Boards' review and approval.

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		In the case of EREPs, an assessment plan submitted as part of applicable binding agreements with funding agencies or in compliance with the conditions of another state or federal permit *may* satisfy this requirement; however it is still subject to the Water Boards' review and approval.
31.11	Definition of Ecological Restoration and Enhancement Project- Page 13. DU suggests that the California Delta Conservancy be added to the list of specific agencies for which a binding stream or wetland enhancement, restoration, or wetland establishment agreement is recognized.	The list of agencies in the definition of Ecological Restoration and Enhancement Projects is not exhaustive. The California Delta Conservancy is considered a resource agency that could enter into a binding enhancement or restoration agreement for a project that may be considered an Ecological Restoration and Enhancement Project. For the sake of clarity, the definition has been revised to explicitly include the California Delta Conservancy.
31.12	DU also concurs with the suggested revisions to this subsection that are provided in the CVJV' s comment letter. There are at least two local public agencies with the primary function of maintaining wildlife and wetland habitats; the Suisun Resource Conservation District and Grassland Resource Conservation District. Therefore, local agencies that have wetland conservation as a primary function should be added to the list of entities for which a binding stream or wetland enhancement, restoration, or wetland establishment agreement is recognized.	The EREP definition has been revised to allow projects undertaken in accordance with a binding stream or wetland enhancement or restoration agreement between certain qualified local agencies and a real property interest owner or an entity conducting the habitat restoration or enhancement work to qualify as EREPs. The revisions to the EREP definition align with the Water Board's goal for no net loss and a long term net gain in the quantity and the quality of wetlands. See Section V Definitions in the Procedures for specific language changes.

Letter 32: Durkin, Samuel

Comment Number	Comment	Response
32.1	We urge you to adopt strong protections for our wetlands.	The commenter's request for adoption is noted.
32.2	The Water Board needs to intervene and adopt a strong rule for wetlands as soon as possible.	The commenter's request for adoption is noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 33: Department of Water Resources

Comment Number	Comment	Response
33.1	DWR is concerned that the current Procedures would exclude EcoRestore and other restoration projects from the alternatives analysis exemption, causing a delay in the development and implementation of these critical projects.	Comment noted. See response to comment #33.2 (below).

Comment Number	Comment	Response
33.2	The definition for “Ecological Restoration and Enhancement Project” (Section V, line 451) in the current preliminary draft of the Procedures potentially excludes numerous DWR restoration projects with inclusion of the phrase “project is voluntarily undertaken” and also, “These projects also do not include …, actions to service required mitigation,…” Many of DWR’s restoration projects are being implemented for compliance with the 2008 United States Fish and Wildlife Service Biological Opinion, the 2009 National Marine Fisheries Service Biological Opinion (collectively, BiOps), and/or the 2009 California Department of Fish and Wildlife Incidental Take Permit (ITP). The restoration obligations set forth in these BiOps and ITP, are ‘reasonable and prudent alternatives’ to offset aquatic food-web impacts resulting from the ongoing operations of the State Water Project. The inclusion of DWR restoration projects under the SWRCB's definition of "Ecological Restoration and Enhancement Projects" will assist DWR and EcoRestore restoration projects in moving forward without a burdensome permit fee schedule and without needing to undertake a detailed Least Environmentally Damaging Practicable Alternative analysis, as such alternative analyses are already undertaken as part of DWR's restoration planning processes. DWR requests that the SWRCB edit the language in the definition of "Ecological Restoration and Enhancement Project", specifically in Section V, line 468 to read *" ... actions to service required mitigation (except as those undertaken by a state or*	The Procedures have not been revised in response to this comment. The commenter’s recommendation to revise the Ecological Restoration and Enhancement Project (EREP) definition would allow **all** compensatory mitigation projects to qualify for the regulatory relief provided for in the Procedures for EREPs. Compensatory mitigation projects are not included in the definition of EREPs. An EREP is voluntarily undertaken to restore an aquatic resource, thereby increasing the inventory of functioning and beneficial aquatic resources. Compensatory mitigation, on the other hand, is a project that is required as a condition of an agency permit to offset impacts to aquatic resources associated with an activity or project. Therefore these types of projects only maintain the existing aquatic resource inventory if successful. While a streamlined application process may be suitable for Eco-Restore projects, an alternative mechanism for providing regulatory relief, such as reaching an agreement with DWR through a memorandum of understanding, may be more appropriate.

Comment Number	Comment	Response
	federal agency as listed in 2) above, ... " (underlines denote suggested text addition).	
33.3	To help better streamline the incorporation of these types of features on 'Ecological Restoration and Enhancement Projects', such as those DWR is actively undertaking, DWR proposes the addition of the following text: Section A.2.b, line 188: "For Ecological Restoration and Enhancement Projects, compensatory mitigation impacts can be based upon future regional sea level elevations."	If the projects DWR are actively undertaking qualify as an EREP then they would not be required to provide compensatory mitigation. Also see response to comment #33.2 (above). For compensatory mitigation projects, see general response #7 for case-by-case determinations related to climate change analyses.

Comment Number	Comment	Response
33.4	Section B.5.c., line 308: following "buffer areas" insert ", including uplands for wildlife refugia and habitat transition zones,"	Wildlife refugia and habitat transition zones may qualify as buffers, which is defined in section 230.92 of the State Supplemental Guidelines.
33.5	Section Subpart J, Section 230.92 Definitions, line 798: following "land uses" insert ", including uplands for wildlife refugia and habitat transition zones."	The term “buffer” is consistent with the federal definition under Subpart J, section 230.92; therefore, the State Supplemental Dredge or Fill Guidelines have not been revised. Wildlife refugia and habitat transition zones may qualify as buffers under the definition.
33.6	While DWR respects the SWRCB's need to exercise its independent authority with regard to permit issuance, we are concerned that the proposed Procedures could result in a conflict between two regulatory agencies, the SWRCB and the Corps, regarding the adequacy of an alternatives analysis for a project. As drafted, the Procedures do not provide any qualitative or quantitative metric by which the permitting authority will determine whether it was given an adequate opportunity to collaborate in the development of the alternative analysis, or how a determination will be made as to whether the alternatives analysis adequately address the issues identified. This approach will result in uncertainty for applicants since the agencies may use a different alternatives analysis for a project, creating a potential	See general response #1.

Comment Number	Comment	Response
	situation where the required project design and mitigation measures will conflict. In such a situation, significant delays in the implementation of critical restoration and flood protection projects could occur while conflicts between the two agencies are resolved. Because of the need to implement projects in a timely manner, DWR respectfully encourages SWRCB to modify this section to allow for the development of a joint, collaborative alternative analyses that would satisfy both the Corps' and the Board's regulatory needs.	
33.7	DWR asks SWRCB to recognize the limitations placed upon an agency such as DWR and ensure that the Procedures allow for flexibility in defining the mechanisms by which the long-term funding needs can be met. DWR appreciates the SWRCB's broad interpretation in the handling of such plans and financial assurances (i.e., Section 230.95 Ecological performance standards, Section 230.96 Monitoring, and Section 230.97 Management), and encourages this section to remain as broad and inclusive as possible.	The Procedures allow for flexibility in defining the long- term funding mechanisms in order to address situations such as described by the commenter. We appreciate the acknowledgement that DWR finds that the Procedures contain appropriate flexibility in this regard.

Letter 34: Endangered Habitat League

Comment Number	Comment	Response
34.1	Endangered Habitats League (EHL) supports the proposed statewide wetlands policy regulation.	The commenter's support is noted.

Letter 35: Environmental Center of San Diego

Comment Number	Comment	Response
35.1	In order for California to protect all remaining wetlands we suggest the following: 1) Alternative Analysis must be performed for every project, with no exceptions;	See general response #1.
35.2	2) Every acre of wetland destroyed or degraded must be mitigated on a one to one ratio, meaning, at the very least, an acre of newly restored or created wetlands for every acre destroyed.	See general response #8.

Letter 36: Environmental Defense Center

Comment Number	Comment	Response
36.1	We support the State's efforts to develop a Wetlands Policy. However, we are concerned that the draft Wetlands Policy does not contain a sufficient definition of a wetland. Many areas considered wetlands by local, state, and federal agencies would not be considered wetlands under the proposed definition and therefore would not be protected.	See general response #4.
36.2	The proposed wetland definition, on the other hand, is a modified three-parameter definition often requiring the presence of wetland hydrology, vegetation, and soils for an area to qualify as a wetland. As such, the draft Wetlands Policy defeats one of the purposes of the policy, which is to create one consistent standard for the State.	See general response #4.
36.3	The draft Wetlands Policy's wetland definition also falls short of its goal to protect all wetlands in the State. Based on an evaluation of wetland projects on the central California coast, by using a modified three- parameter definition, the policy and regulations will apply to only approximately half the acreage of wetlands that would be captured under the one-parameter definition. Moreover, the proposed modified three- parameter definition is inconsistent with and less protective of wetlands than the definitions used by CDFW, CCC, United States Fish and Wildlife Service ("USFWS") and Regional Water Quality Control Board Regions 2 and 4, and the Lahontan Regional Board.	See general response #4. In addition, refer to table 5-5, "Wetland Definitions/Procedures and Wetland Beneficial Uses Contained in Regional Water Quality Control Board Basin Plans as of September 2012" for an inventory of wetland definitions used by the regional water quality control boards.

Comment Number	Comment	Response
36.4	To ensure consistency and reduce confusion amongst applicants and the public, it is imperative that the SWB provide a wetland policy that includes the broader wetland definition. Absent this, areas considered wetlands by USFWS, CDFW, CCC, counties such as Santa Barbara County, and some Regional Boards will not be protected by the SWB's draft Wetlands Policy and, as a result, California will continue to lose more wetlands to dredge and fill than it gains through mitigation and restoration.	See general response #4.
36.5	In order to preserve these invaluable resources, the definition of a wetland must be stable, accurate, and consistent with other local, state, and USFWS wetland definitions. In accordance with the goal of preserving the crucial role wetlands play in the State of California, we request that the SWB evaluate an alternative wetland policy which includes the broader one-parameter wetland definition – the definition used by the vast majority of other relevant agencies.	See general response #4.

Letter 37: Flaming, Susan

Comment Number	Comment	Response
37.1	PLEASE SAVE the California wetlands, so that our current and future generations of residents can enjoy a fundamental part of our heritage. Please also consider that this is essential to the survival of millions of birds.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 38: Golden Gate Salmon Association

Comment Number	Comment	Response
38.1	I write to offer GGSA's strong support for strengthening and adopting the Board's draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State ("Wetlands Policy") that the State Water Resources Control Board released for public comment on July 21, 2017.	The commenter's support is noted.
38.2	Because of the important value of wetlands and streams, and because of pending rollbacks in DC, a strong Board program to protect our remaining wetlands and streams is essential. Yet despite a two-decade old state "no net loss" of wetlands policy, California continues to lose wetlands. The Board has strong authority to protect wetlands and the benefits they provide for salmon. However, the Board must act to clarify and enforce that authority.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetland acreages and values.

Comment Number	Comment	Response
38.3	The first step to protecting wetlands is to avoid impacts wherever possible. The draft should be strengthened to state clearly that all applicants proposing to fill or discharge to wetlands must fully evaluate alternatives. The current draft allows too much discretion in different regions with regard to alternatives analysis. The board should ensure that all regions require a full, rigorous analysis of the available alternatives to avoid or reduce proposed impacts to wetlands.	See general response #1
38.4	Second, the draft should be strengthened to state clearly that projects that receive Board permits to fill wetlands will, in all cases, be required to mitigate with a ratio of at least “one-to-one.” There are several reasons why this is a critical requirement: • Without a mitigation requirement of at least “one-to- one”, it would be much more difficult to achieve the state’s no net loss of wetlands goal. • Wetlands created through mitigation requirements frequently do not function biologically as well as natural wetlands lost to development. This suggests the need for mitigation ratios of greater than “one-to-one.” • Even where mitigation is effective, there is, in the vast majority of cases, a temporary loss of wetland values. That temporal loss should also be mitigated. • If the Board were to allow mitigation ratios of less than “one-to-one” for degraded wetlands, it would create a strong incentive for developers to find creative ways to degrade wetland resources.	See general response #8.

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	This is not a theoretical concern. It has been seen, for example, in the case of seasonal wetlands around San Francisco Bay.	

Letter 39: Grasslands Water District and Grassland Resource Conservation District

Comment Number	Comment	Response
39.1	We support the requested revisions to the Wetlands Policy submitted by the CVJV, which will strengthen protections for managed wetlands, including those in the Grasslands Ecological Area, the largest contiguous freshwater wetland complex west of the Rocky Mountains. In particular, the three changes requested by the CVJV will: (1) streamline the application process for Ecological Restoration and Enhancement Projects, in light of the strict definition of those projects and their importance for wetland conservation; (2) allow local agencies that have the primary function of managing wetlands to qualify as signatories to wetland enhancement, restoration, and establishment agreements; and (3) add language to the staff report or similar document, describing prior water board orders and resolutions that address managed wetlands.	Comment noted. See general response #5 for requested change (1). For requested change (2), the State Water Board agrees with the suggested revisions as these projects align with the Water Boards' goal for no net loss and a long term net gain in the quantity and the quality of wetlands. The EREP definition has been revised to allow for local agencies that are qualified to enter into agreements with a real property interest owner or an entity conducting the habitat restoration or enhancement work, to qualify as EREPs. Please see the Procedures for specific language changes. Finally, the Staff Report has not been revised in response to requested change (3) in this comment because the Staff Report already references orders regulating restoration projects that have been approved in the past. In addition, the requested additions are beyond the scope and purpose of the Staff Report. The Staff Report was developed to support the Procedures and satisfy environmental review under CEQA. See section 4.1 of the Staff

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		Report for a more thorough discussion of the purpose and scope of the Staff Report.

Letter 40: Harrison, Temblador, Hungerford & Johnson

Comment Number	Comment	Response
40.1	While we appreciate the State Board's efforts to create a uniform statewide regulatory program, we have significant doubts regarding the State Board's authority to implement the Regulations under federal and state law and the Administrative Procedures Act ("APA").	Section 4.6 of the Staff Report outlines the process and standards in which the Administrative Procedures Act establishes for rulemaking. The Procedures, as well as other state regulations, must be adopted in compliance with regulations set for by the Office of Administrative Law. Section 11353 of the Administrative Procedures Act governs adoption or revision of water quality control plans, and exempts the State Water Board from the remainder of the act. (Gov. Code, § 11353.) This section requires, among other things, that the State Water Board follow all procedural requirements of Division 7 of the Water Code, which includes the opportunity for public comment and a public hearing. The State Water Board will follow all of these requirements in considering the Procedures for adoption. As part of a water quality control plan, if adopted, the Procedures will have the same force and effect as a regulation, but it will not be included as part of the California Code of Regulations.

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40.2	The Regulations outline a new permitting procedure for discharges to "waters of the state", the vast majority of which are already subject to regulation under the Clean Water Act. Put simply, the new permitting procedures will result in an unlawful duplication and complication of the Corps' Clean Water Act Section 404 permitting program and frustrate the objectives of Congress.	See general responses #9 and #10.
40.3	Although congress left room in under the CWA for state regulations that are more stringent than federal regulations, state regulations are nonetheless pre-empted by federal law if those regulations "stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Jones v. Rath* Packing Co. (1977) 430 U.S. 516, 525-526.) As the United States Supreme Court noted in *Int'l Paper Co. v. Oullette* (1986) 479 U.S. 481, in determining where whether a state water regulation "stands as an obstacle" to the execution of the CWA: [i]t is not enough to say that the ultimate goal of both federal and state law is to eliminate water pollution. A state law is also pre-empted if it interferes with the methods by which the federal statute was designed to reach its goals. [*id*. at 494.] Subpart (g) of Section 404 outlines the sole procedure by which a state may establish a program to regulate the regulation of discharge of dredged or fill materials. By its own admission, the state has not	This comment does not identify any specific provision of the Procedures that stands as an obstacle to the execution of the Clean Water Act. The State Water Board is not seeking delegation to administer the section 404 program via adoption of the Procedures.

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	completed the process outlined in Section 404(g).	
40.4	By implementing the Procedures without completion of the procedures required by section 404 subpart (g), the State Water Board would frustrate federal law by overcomplicating, duplicating and confusing the Corps' 404 permitting process. The Procedures are therefore pre-empted by federal law.	The Procedures are based on the Water Boards' authority under section 401 of the Clean Water Act and the Porter- Cologne Act. The Procedures do not alter the Corps' authority or standards or review for the issuance of section 404 permits.
40.5	The State Board lacks Authority to Implement the Procedures Under the Porter Cologne Water Quality Control Act ("the Porter Cologne Act"): The Porter Cologne Act grants the State Board the authority to regulate the discharge of waste that may affect the quality of waters in the state. Section 13050(d) of the Water Code defines "waste" as including "sewage and any and all other waste of human or animal origin, or from any producing, manufacturing or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal." The definition of waste does not include discharges of dredge or fill material. The Porter Cologne Act does not provide the State Board with authority to regulate dredged or fill material as the State Board has suggested.	See general response #9.
40.6	Pursuant to California Government Code Section 11353, the Office of Administrative Law ("OAL") is required to review proposed regulations to ensure that, among other things, they are clear and consistent such that the regulated community understands how to comply with them. As drafted, the Regulations do not meet this standard. For	The footnote expressly states that waters of the U.S. include "any current or historic final judicial interpretation of 'waters of the U.S.'" As further explained in general response #2, waters of the state is a broader category of waters than waters of the United States. Waters of the state are not subject to the same jurisdictional limitations that apply to

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	example, the Regulations identify a definition of "waters of the United States" which includes “any current or historic or historic final judicial interpretation of 'waters of the U.S.' or any current or historic federal regulation defining 'waters of the state'" (Footnote 2 of the Regulations.) This footnote suggests that prior regulatory interpretations that have been subsequently rejected by the courts of this land are nonetheless valid for this regulation. This is an impossible standard.	interpretations of waters of the U.S. under the Clean Water Act.
40.7	As drafted, we believe that the Regulations would amount to an unlawful interference with the laws and procedures adopted by Congress under the Clean Water Act.	See general response #9.
40.8	Moreover, the State Board lacks authority to implement the Regulations under the Porter Cologne Act.	See general response #9.
40.9	By implementing the Regulations, the State Water Board would cause unnecessary confusion and delay, as the regulated community attempts to comply with the requirements of the Clean Water Act.	See general response #9.

Letter 41: Haussner, James

Comment Number	Comment	Response
41.1	There does not appear to be any reason for moving forward with these documents. Rather than reducing inconsistencies, it appears the Procedures will increase inconsistencies.	The Procedures have many objectives, one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. In addition, the proposed Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredged or fill material into waters of the state and to prevent further losses in the quantity and quality of wetlands in California. The Staff Report explains the need for the Procedures in the Project Need section.
41.2	What is meant by "historic definitions of waters of the United States?" There were times following the passage of the Clean Water Act that individuals within the Corps were defining a wetland differently than it is now being defined. Does this constitute a "historic definition?" If, so I request this language be withdrawn.	See general response #2. Historic definitions of waters of the U.S. means past interpretations regarding the jurisdictional scope of the Clean Water Act.
41.3	I am very concerned about the exclusion language for "artificial wetlands" used in the "settling of sediment," as the Board is looking at a definition of wetlands that include two of the three normally required conditions. A sediment settling pond will have soils consistent with wetlands and at certain times water consistent with wetlands. If an area used for "settling of sediment" becomes by definition a wetland, then it most likely will not be able to be used in the future. I request this be amended to prevent such a scenario from happening.	If the artificial feature meets the technical wetland definition, and is being used and maintained for the purposes of settling sediment according to the conditions in section II.3.d, that feature would be excluded from jurisdiction.

Comment Number	Comment	Response
41.4	There is no description of what is an adequate address to issues identified by the Executive Officer or Executive Director.	Adequacy will depend on the issues identified. See general response #1.
41.5	If the Corps does not require a alternatives analysis for waters of the U.S., why is it mandatory for the permitting authority to require one? This language should be permissive.	The 2016 version of the draft Procedures allowed for an alternatives analysis to be required on a case-by-case basis. Due to the high volume of requests, the requirement has been revised. See also general response #1.
41.6	The exclusions for Prior Converted Cropland should include that the area was wet due to natural issues, such as rain, and was not able to be planted. This should recognize the difference between abandonment and unable to farm. Additionally, why five years why not ten years.	Prior converted cropland determinations are not made by the Water Boards. See general response #3.
41.7	It is not clear if the Ecological Restoration and Enhancement Project would include creation of "living shorelines" or the use of dredged material to "protect" existing ecosystems from sea level rise or storm surges. This section should be improved to meet the current State of California positions in documents such as Safeguarding California: Reducing Climate Risk and the California Climate Adaptation Strategy.	The creation of living shorelines and shoreline protection projects may qualify as an Ecological Restoration and Enhancement Project (EREP) if that project meets the definition of an EREP set forth in section V of the Procedures.
41.8	Who determines the "relevant stakeholders" in the development of a Watershed Plan?	Developers of watershed plans will determine relevant stakeholders for the area in which a watershed plan is being developed.

Comment Number	Comment	Response
41.9	I am confused by the allowance of "General Orders" and the removal of "General permits."	Revisions were made to the State Supplemental Dredge or Fill Guidelines (Appendix A) to clarify that the Water Boards issue General Orders, not general permits. “Order” is defined in Section V.
41.10	In Section 230.6 there is a reference to Section 230.1, which I was unable to locate. Did you mean Section 230.10?	Section 230.6 has been revised to correctly refer to section 230.10.
41.11	Section 230.10 requires definitions concerning terms such as "significantly adverse effects."	The Procedures have not been revised in response to this comment. Section 230.10 is consistent with the federal 404(b)(1) guidelines, which do not include a definition of “significantly adverse effects.”

Comment Number	Comment	Response
41.12	How can one define a wetland as a "natural wetland?" Using the term wetland to define a wetland is not helpful and will lead to confusion.	Under the jurisdictional framework in section II of the Procedures, “natural wetlands” are wetlands that meet the technical definition of a wetland, and are distinguished from artificial wetlands (section II.3), or wetlands created by modification of a water of the state (section II, footnote 2). Wetlands that meet current or historic definitions of “waters of the U.S.” could also include “natural wetlands.”
41.13	Section 230.40 should entirely be rewritten to include the federal definition of sanctuaries. The federal definition does not limit them to principally managed for the preservation and use of fish and wildlife resources.	The Procedures have not been revised in response to this comment. In creating the State Supplemental Dredge or Fill Guidelines (Appendix A), the approach was generally to limit changes from the federal 404(b)(1) guidelines. In addition, the description of sanctuaries and refuges in section 230.40 of the State Supplemental Dredge or Fill Guidelines is consistent with the description of sanctuaries and refuges in the federal guidelines.
41.14	Subpart H - when taking actions to minimize adverse effects, which actions should take precedent? While this example is in the extreme, it does show the potential for future problems. If one limits taking actions during biologically critical periods this may require taking the action during periods when human recreational activity is important.	As explained in the introductory note to Subpart H, the measures listed in Subpart H are examples of the types of possible steps that may be taken in order to comply with section 230.10(d). Whether such actions are appropriate for any given project will need to be analyzed on an individual basis. The actions described in Subpart H are identical to the federal 404(b)(1) Guidelines and should therefore be familiar to operators who have been subject to CWA section 404 permits for discharging dredged or fill material to waters of the U.S.

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41.15	230.70 - when minimizing a "plume" should one take into consideration naturally occurring "plumes" as a reference?	See response to comment #41.14 above.
41.16	230.70 - there are times when material is being placed into a retention pond and the waters are not being released until such time as issues such as dissolved sediment levels are reduced. Does section (f) limit such an activity? If so it should be amended to allow for such activities.	See response to comment #41.14 above.
41.17	230.77 - what is meant by "scientifically defensible pollutant concentration levels in addition to any applicable water quality standards?" Does this mean water quality standards are not scientifically defensible?	The terms "scientifically defensible pollutant concentration levels" and "applicable water quality standards" are not mutually exclusive. As required by the Clean Water Act and the Porter-Cologne Water Quality Control Act, water quality standards are based on scientifically defensible research and data. Not every "scientifically defensible pollutant concentration level" in existence is within the framework of a water quality standard.
41.18	Definitions are scattered around in the document, which leads to confusion. There are definitions in the body of Procedures as well as in various Subparts. Why can't they all be in one section of the Procedures?	In an effort to align state practices with federal practices, to the extent practicable, the Procedures include relevant portions of the federal 404(b)(1) guidelines. Within the federal guidelines, two subparts include definitions: Subpart A, section 230.3, and Subpart J, section 230.92. Section V of the Procedures includes definitions of terms that were not included in the federal guidelines, or state- specific definitions of terms where the Water Boards are not able to adopt the federal definition due to jurisdictional or procedural limitations.

Comment Number	Comment	Response
41.19	In compensatory mitigation how does the permitting authority measure the value of the loss of one type of aquatic resource versus the gain of another? I am aware of issues in San Francisco Bay with seasonal habitat versus tidal habitat.	The permitting authority makes these types of decisions by using a watershed approach, which is defined in the Procedures as "an analytical process for evaluating the environmental effects of a proposed project and making decisions that support the sustainability or improvement of aquatic resources in a watershed. The watershed approach recognizes that the abundance, diversity, and condition of aquatic resources in a watershed support beneficial uses. Diversity of aquatic resources includes both the types of aquatic resources and the locations of those aquatic resources in a watershed. Consideration is also given to understanding historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources. The watershed approach can be used to evaluate avoidance and minimization of direct, indirect, secondary, and cumulative project impacts. It also can be used in determining compensatory mitigation."
41.20	Based on the Staff Report, I request the Board withdraws Resolution 2008-0026 and directs staff to determine exactly what the impacts are to wetlands that are within waters of the state and not within the federal jurisdiction.	Comment noted. The Procedures have many objectives, one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. In addition, the proposed Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state and to prevent further losses in the quantity and quality of wetlands in California. The Staff Report explains the need for the Procedures in the Project Need section.

Letter 42: Heal the Bay

Comment Number	Comment	Response
42.1	Our primary concern remains that the compensatory mitigation requirements could lead to a net-loss of wetlands in the State, a possibility which we cannot support. There are sections in the current policy that call into question the ability to meet the primary goal of the California Wetlands Conservation Policy, which is to 'achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage'.	See general response #8.
42.2	Further, we still have concerns over the ratio for compensatory mitigation, the possibility that off-site compensatory mitigation does not consider environmental justice, exemptions for prior converted cropland and irrigation ditches leading to a net-loss of wetlands, and the technical definition of wetlands.	See general responses #3, #4 and #8. See response to comment # 42.5 (below) in response to environmental justice concern.
42.3	As such, a strong policy is required that prioritizes and promotes wetland protection, restoration, and management.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetland acreages and values.
42.4	Compensatory mitigation should be required at a minimum ratio of 3:1 acres of mitigation wetland to natural wetland lost. Mitigation should never be under 1:1. It is important to note that mitigation should be considered a last resort for meeting the goals of the 'no net loss' policy. Nationwide, methods to replace wetlands have largely proven unsuccessful in fully re-creating the biodiversity and habitat lost in areas where the wetlands have been	See general response #8.

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	impacted or destroyed. Research shows that in general, mitigation requirements in 401 and 404 permits have been shown to be insufficient to ensure high performance in mitigated wetlands. According to Kihslinger, studies of the ecological performance of compensatory mitigation have shown that compensatory wetland projects fail to replace lost wetland acres and functions more often than they fail in their ability to meet permitting requirements. As such, many compensatory mitigation projects would be seen to be successful in their permit requirements but would be failing to provide adequate functional replacement of the lost wetlands. In addition to not meeting acreage requirements, mitigation wetlands often do not replace the functions and types of wetlands destroyed due to permitted impacts. The Amount of Compensation section of the Preliminary Policy states that the Water Boards shall presume that a one-to-one acreage or length of stream reach is the minimum necessary to compensate for wetland or stream losses. This minimum is unjustifiably low. The Policy should contain a higher mitigation ratio to create a margin of safety to account for the disparity between the functions and acreage lost and the mitigated area. In situations where wetland destruction is unavoidable, a minimum mitigation ratio of 3:1 for new mitigation area to original wetland area should be established in this Policy to ensure that adequate area is set aside to mitigate wetland impacts.	

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	Setting the minimum mitigation ratio at a 3:1 ratio will also help ensure that avoidance of impacts is prioritized over minimizing and compensating for impacts. This ratio is a standard minimum that is frequently required for projects approved by the California Coastal Commission. Thus, use of this 3:1 ratio would ensure consistency with another State Agency and set a strong precedence of wetland protection throughout the State, setting a positive example for other Agencies to follow in strengthening their mitigation requirements. Again, we appreciate that a variety of factors are taken into account when determining the final mitigation ratio and that the ratio is oftentimes over 1:1; however, we urge taking a precautionary approach and setting the minimum at a higher ratio (3:1), with the burden of proof on applicants to demonstrate why a lower ratio may be warranted. As proposed, the Policy suggests that compensatory mitigation could be under a 1:1 ratio without providing any evidence to support the rationale. Given the scientific literature on limited success in wetland mitigation projects—Kihslinger and Ambrose—and the goal of no net-loss of wetlands, a policy that allows for a net loss of wetlands is concerning. We do appreciate that a mitigation ratio of less than 1:1 will only be granted on an “exceptional basis”; however, given that this scenario is so rare, why even include it if there is the possibility that it could result in a net-loss of wetlands? We are glad to support a policy that might result in occasional net- gains of wetlands if this	

Comment Number	Comment	Response
	scenario results in mitigation projects that occasionally protect or restore highly functioning wetlands in greater amounts than were impacted.	
42.5	Compensatory mitigation should consider social benefits as well as ecological benefits. We appreciate that a watershed approach, focused on ecological benefits, is prioritized for compensatory mitigation. However, we recommend that proposed mitigation projects be required to assess losses in environmental services to communities. For some mitigation projects, simply using the watershed approach may adequately capture the lost ecological area and habitat functions, but not properly replace the environmental services of open, green space in communities. A policy without such an assessment risks exacerbating environmental health inequalities by redistributing ecological amenities outside the sub- watersheds even if the mitigation remains within the larger watershed. For example, the Los Angeles River Watershed is over 800 square miles. Compensatory mitigation for a project in Compton Creek—a tributary in the extreme southern part of the watershed, may occur at a common mitigation bank in Tujunga Wash [footnote]— a tributary located in the northeast portion of the watershed. While both are in the Los Angeles River watershed, and the Tujunga Wash may be a superior ecological project, the loss of additional green, open space in South	The Procedures required that the Water Boards use the watershed approach to determine the most environmentally preferable compensatory mitigation for adverse impacts to waters of the state. The watershed approach is used to determine the amount, type, and location of compensatory mitigation that will provide the desired aquatic resource functions and will continue to function over time in a changing landscape. As a part of this ecological evaluation, other site selection factors are considered (see State Supplemental Guidelines section 230.93(d)(vi)) that includes trends in development, land use changes and regional goals for protection of certain habitat areas. Thus in evaluating all of these factors in applying the watershed approach to meet the environmental goal of protecting and sustaining overall watershed health, the Water Boards support the agency's environmental justice program to treat all people fairly with respect to developing and implementing water quality control plans and policies.

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	Los Angeles is disproportionately impacting one community over another. In this example, the socio-economic communities differ greatly and the unequal distribution of open space and recreational opportunities becomes an environmental justice issue. Mitigation banking or in-lieu fee programs should not exonerate the applicant from providing some environmentally friendly project within the locale of the impacted area. We recommend that mitigation projects be kept as local as possible to avoid these concerns of redistribution of wetlands and open space areas.	
42.6	The process for determining mitigation fees should be open to public review and account for ecosystem services. We recognize that mitigation fee determination will need to be made on a project-by-project basis to account for site-specific factors. We urge the State Water board to make the mitigation fee determination process public, so that stakeholders have the opportunity to review and provide comment on the proposed mitigation fee determination calculations. Presenting opportunity for public review of how mitigation fees are determined for projects provides a forum to incorporate important local knowledge into the process and give an independent assessment of whether the impacts are adequately compensated. We also recommend that the State Water Board include a robust process for incorporating ecosystem services valuation into the mitigation fee	It is unclear what mitigation fee the commenter is referencing. The fees charged by the Water Boards for the discharges of dredge and fill material are established annually by regulation, which includes a public participation process. For more information about the fee regulations, please visit the State Water Board's fees homepage, where stakeholders can sign up for updates and get additional information about stakeholder meetings. The comment may instead be referring to the fees charged by mitigation banks or in-lieu fee programs for credits or the costs of permittee-responsible mitigation. The cost of credits from a bank or in-lieu program is determined by the sponsor of a mitigation bank or in-lieu fee program. For permittee-responsible mitigation, it is the applicant's responsibility to provide sufficient funds

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	determination process. Wetlands provide a number of ecosystem services, from water filtration to providing a natural buffer to sea level rise and storm surges associated with climate change. Therefore, it is imperative that compensation for wetlands degradation accounts for the many vital services provided by these important habitats.	to carry out the mitigation following the conditions set forth by the Order. The Water Boards may request financial assurances for the project, but does not charge a specified fee.
42.7	Exemptions could result in wetlands losses; do not allow exemptions for prior converted cropland (PCC) or irrigation ditches. The exemptions in the Preliminary Draft Policy are concerning and may result in net losses of wetlands. The Draft Policy excludes wetlands that have been certified as Prior Converted Cropland (PCC) from the permitting requirements. This provides a loophole where a landowner could convert a PCC into an agricultural use and then could convert that agricultural use into a development, resulting in complete loss of wetland habitat. PCCs can provide important wetland functions and excluding them from the permitting requirements allows for a loophole in which wetlands and the ecosystem services they provide may be lost.	See general responses #2 and #3.
42.8	In addition, irrigation ditches may provide important habitat and ecological functions. Completely excluding them from permitting requirements is a mistake. Further, the definition of irrigation ditches needs clarification. For instance, soft-bottom creeks with concrete side channels (such as portions of Compton Creek and the Los Angeles River)	See general responses #2 and #3.

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	may be classified as “irrigation ditches” or “engineered maintenance channels” but they provide important habitat and services to the ecosystem. Any impacts to these habitats should be properly avoided, minimized, or mitigated. We recommend that a precautionary approach be applied and that PCC and irrigation ditches/engineered maintenance channels be included in the Policy and that the onus be on the applicant to prove otherwise that they are exempt from the Policy.	
42.9	The Preliminary Draft Policy should utilize a one-parameter wetland definition. Of note, we recognize that the wetland definition in the Preliminary Draft Policy is more inclusive than the Army Corps definition. However, we are still concerned that the wetland definition used is not inclusive of all of California’s remaining wetland resources. In particular, sites that may be degraded but which are still prime targets for restoration or are located in critical areas should be considered wetlands. We urge the Board to consider adopting a one parameter definition instead, such as a modified version of the one-parameter definition used by the U.S. Fish and Wildlife Service. That definition requires that only one of the wetland parameters - hydrology, hydric soils, or hydrophitic plants– be present for an area to be considered a wetland.	The wetland definition would apply to only programs administered by the Water Boards. The Water Boards’ wetlands definition would not be binding on other agencies administering programs that also regulate wetlands. As the commenter correctly noted, other agencies use different definitions of wetlands. In regards to alternatives to the definition, section 10.2 of the Staff Report includes an analysis of the one and two parameter wetland definitions. The objective of analyzing alternative definitions was to identify the most appropriate definition for California wetlands that also meets the Water Boards’ regulatory mandates under the Porter-Cologne Act. The Staff Report concluded that neither a one nor a two parameter option are viable alternatives for three reasons. First, there is the potential for declaring non-wetland upland features as wetlands due to relic hydric soil indicators and/or false-positive indicators of hydrophytic vegetation. Second, delineation procedures have not been

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		developed for one or two parameter definitions. As such, there is a lack of field identification criteria, indicators and guidance on regional variation. This is significant for an agency with regulatory responsibility for wetland protection. Finally, adopting a one or two parameter definition would create major regulatory inconsistencies with the USEPA and Corps' wetland definition. See also general response #4.
42.10	Conduct regular audits to assess policy effectiveness and success. The State Water Resources Control Board (SWRCB) needs to audit the Policy to assess the program and policy recommendations. This process could be done by requiring the individual Water Boards to conduct an assessment and produce a report every 3-years to the SWRCB. Without any historic assessment of the policy, it is impossible to determine issues like 1) mitigation preference, 2) service area requirements, 3) Water Board integration with other programs (NPDES, WDR, and MS4) that encompass a watershed approach, 4) restoration evaluation and success, 5) avoidance analysis, 6) annual accounting of wetland acres, 7) spatial distribution or concentration and, 8) monitoring effectiveness.	The Water Boards assess and promote compliance with Orders through the review of self-monitoring reports submitted by dischargers, conducting inspections, and monitoring possible enforcement actions. Many of the measures indicated by the commenter are already tracked through the California Integrated Water Quality System Project (CIWQS), including accounting of impacts and required compensatory mitigation. In addition, the Water Boards are working on approaches to track ecologically-based performance measures that would comply with California's no-net loss policy. Finally, the Water Boards annually report on performance metrics for many of their programs, including the wetlands program. These performance measures can be found on the State Water Board's website under "Resources." Some of the metrics that the commenter identifies are already included in those performance measures. Others are being develop for future inclusion in performance measures.

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42.11	Further, the Water Boards should establish basin plan criteria and objectives for the 401 program: number of acres gained, lost, impacted, restored, and preserved; reduction goals for frequency of impact to wetland areas; adoption of CRAM or IBI scoring (or other metric) for determining the effectiveness of protecting biological- based beneficial uses. Required consistent tracking and assessment of all Policy permits will ensure that the California Wetlands Conservation Policy of “no net loss” and goal to “achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage” are upheld and that critically important wetland habitats are preserved, protected, and restored.	See response to comment #42.10 (above). For compensatory mitigation, Procedures section IV.A.2.b(ii) requires “an assessment of the overall condition of aquatic resources proposed to receive a discharge of dredged or fill material and their likely stressors, using an assessment method approved by the permitting authority…”

Letter 43: Hoover, Victoria

Comment Number	Comment	Response
43.1	Today, I wish to express my support for the proposed statewide wetlands policy regulation ("Procedures for Discharges of Dredged or Fill Materials to Waters of the State"), and ask you and the other board members to do the same. California has lost over 90% of its historic wetlands, and we must do all we can stop further harm, protect what remains, and rebuild some of what we've lost.	The commenter's support for the Procedures is noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Comment Number	Comment	Response
43.2	Despite all of this, the President recently acted to roll back federal protections for wetlands. This is wholly unacceptable, California must do all it can to protect our state's resources from federal inaction. The State Water Resources Control Board stands in a unique position to lead in the face of federal retreat. I urge you to use your authority to adopt the statewide wetlands policy.	The commenter's request for adoption is noted.
43.3	First, because restored wetlands or wetlands created specifically to make up for the destruction of other wetlands by some kind of development project do not perform as well as natural wetlands or, it takes maybe a decade or more before they really start to function as they should, . I ask the Board to insist that under the new compensatory mitigation policy every wetland acre destroyed or degraded must be mitigated by at least an acre of newly restored or created wetlands. This will help comply with the state's "no net loss" of wetland acreage or function policy.	See general response #8.
43.4	Secondly, with regard to the Alternatives Analysis" to show why the project couldn't be undertaken on a non- wetland site - that the proposed policy regulation rightly requires, unfortunately there seems to be a loophole, in the statement that a Regional Water Board can ignore the Alternative Analysis requirement for any project and it doesn't even have to provide a reason. Instead, the State Water Board should insist that an Alternative Analysis must be performed for every project- no exceptions.	See general response #1.

Letter 44: Hubbs, Barbara

Comment Number	Comment	Response
44.1	I am writing in support of the statewide wetlands policy that is being proposed. I am a member of the Bolsa Chica Land Trust and a supporter of the Los Cerritos Wetlands. Our wetlands are vital to our future. I hope you will oppose our presidents attempt to roll back protection for wetlands. Strengthen our state's resistance and support the statewide wetlands policy.	The commenter's support of the Procedures and request for adoption is noted.

Letter 45: Humboldt Baykeeper

Comment Number	Comment	Response
45.1	We also ask that the Board finalize this policy as soon as possible to secure these environmental protections and provide regulatory certainty in these uncertain times.	The commenter's request for adoption is noted.
45.2	Wetlands outside the Coastal Zone are especially at risk due to the lack of expertise of local municipalities, lack of a standardized wetland definition, and lack of resources at the Regional Board, which is so overloaded and far away that only the most egregious cases get attention.	Comment noted.
45.3	First, we ask that the Board strengthen the compensatory mitigation requirements so that mitigation ratios are always one-to-one or greater to ensure compliance with the no-net-loss policy. This is particularly important as mitigation wetlands typically do not perform as well as natural wetlands.	See general response #8.

Comment Number	Comment	Response
45.4	Secondly, the exemptions to the alternatives analysis requirements must be refined to ensure that the Regional Boards always follow the guidelines regarding required level of analysis	See general response #1.
45.5	Finally, we ask that the Board close a loophole for prior converted croplands. As currently drafted, this loophole could be exploited to exacerbate the destruction of natural wetlands on certain agricultural lands to make way for urban sprawl.	See general response #3.
45.6	We also request that there is no significant deviation from the currently proposed timeline in adoption of the policy.	Comment noted.

Letter 46: Irvine Ranch Water District

Comment Number	Comment	Response
46.1	The intent of the Wetlands Jurisdictional Framework, as stated in the Draft Staff Report, is to exclude artificially constructed facilities that meet the technical definition of a wetland from regulation as wetland WOTS. IRWD is concerned that as drafted, the Framework would include virtually all artificial, Multi-Benefit Constructed Facilities into the wetland Waters of the State (WOTS) designation.	See general response #2.
46.2	IRWD is requesting that the State Board exempt Multi- Benefit Constructed Facilities from permitting under the Proposed Regulatory Program by excluding, for purposes of the Proposed Regulatory Program only, such facilities from jurisdictional Waters of the State.	See general response #2.
46.3	IRWD is concerned that, as proposed, the Definitions, Procedures and Proposed Regulatory Program will significantly impact the creation, restoration, enhancement, management, operations, and maintenance of Multi-Benefit Constructed Facilities. As discussed below, Multi-Benefit Constructed Facilities are encouraged by a number of state polices, and the State should continue to incentivize their continued operation and expansion. The increased costs and delays associated with the permitting requirements Proposed Regulatory Program would affect IRWD's ability to cost- effectively operate and maintain its existing facilities and would discourage construction of new ones. It would not provide a demonstrable incremental benefit to water quality or the	See general responses #2 and #12.

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	environment since these facilities are already protected by existing resource regulations.	
46.4	The Proposed Regulatory Program mandates that the State Board and the Regional Water Quality Control Boards implement a new expanded permitting program for discharges of dredge or fill material to WOTS. From IRWD's "on-the-ground" perspective, the scope of the Proposed Regulatory Program's new permitting requirements and the stringency of the new permit application analysis requirements, will add unnecessary costs and delays to the development, operation and maintenance of IRWD's Multi-Benefit Constructed Facilities.	As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. It is important to note that application requirements outlined in the Procedures are requested during the Water Boards' existing application review process; these requirements are not new and the Procedures are not creating a new regulatory program. Also see general response # 2 & #12.
46.5	The Proposed Regulatory Program's permit application and analysis are not required under currently applicable federal or State laws. In many cases the new permitting requirements would mandate waste discharge requirements for the operation and maintenance of Multi-Benefit Constructed Facilities. The State's regulatory role plays an important part in shaping the economic and technical constraints that we take into consideration when deciding whether to undertake, prioritize, or continue maintenance of a particular Multi- Benefit Constructed Facilities project. The additional regulatory requirements will discourage construction of new Multi-Benefit Constructed Facilities, which can provide significant environmental, water supply and economic benefits to the state.	See general responses #2 and #12.

Comment Number	Comment	Response
46.6	Although the Proposed Regulatory Program new permit requirements would add costs and delays, they would not be offset by an incremental environmental benefit due to the significant degree to which the new permitting program duplicates regulation of resources already protected under section 404 of the Clean Water Act (CWA) by the U.S. Army Corps of Engineers and the U.S. EPA, and section 1600 of the California Fish and Game Code by the California Department of Fish and Wildlife. The Proposed Regulatory Program would impose new and supplemental permitting requirements, all of which are different than, and in some cases conflict with, existing federal and State requirements as summarized in Attachment 1. In order to preserve and expand the benefits to the State from Multi-Benefit Constructed Facilities, we request that the State Board revise the Proposed Regulatory Program to exclude Multi-Benefit Constructed Facilities from the proposed permitting requirements by excluding them from designation as wetland WOTS for purposes of the Proposed Regulatory Program. Proposed revisions to the procedures are provided in Attachment 2.	In regards to overlapping or conflicting regulatory requirements, see general response #10. In regards to the request to exclude multi-benefit constructed facilities from waters of the state, see general response #2.

Comment Number	Comment	Response
46.7	It is critical that the State Board continue to protect natural, historic wetlands while simultaneously encouraging and supporting the construction of artificially constructed Multi- Benefit Constructed Facilities that are designed to improve water quality and water supply throughout the state. The Proposed Regulatory Program should consider and address the fact that Multi-Benefit Constructed Facilities are different from naturally occurring WOTS. Regulating managed artificially constructed treatment wetlands, and other Multi-Benefit Constructed Facilities as though they are natural can greatly discourage their continued and future expanded use. The high level of protection needed for natural wetlands, when applied to Multi-Benefit Constructed Facilities, leads to unnecessary cost and restriction of critical maintenance activities, These costs and restrictions are not offset by any additional environmental benefit from the Proposed Regulatory Program due to the degree to which the new permitting program duplicates regulation of protected resources. Therefore, we request that the State Board revise the Proposed Regulatory Program to exclude/exempt Multi- Benefit Constructed Facilities from the requirements of the new permitting program.	See general response #2.

Comment Number	Comment	Response
46.8	New/Supplemental Permitting Requirement: Delineation Report for wetland and nonwetland WOTS New/Increased Regulatory Burden: For wetland WOTS: New definition and new Wetlands Jurisdictional Framework substantially increases the number of Multi- benefit Constructed Facilities deemed jurisdictional wetland WOTS compared to existing regulation Consistent with USACE and CDFW regulation?: No	See general response #2.
46.9	New/Supplemental Permitting Requirement: Delineation Report for wetland and nonwetland WOTS New/Increased Regulatory Burden: For non-wetland WOTS: no guidance regarding features that are jurisdictional, leaving it to each Water Board's discretion, and resulting in inconsistent application across regions Consistent with USACE and CDFW regulation?: No	See general response #11. Definitions and delineation procedures for non-wetland aquatic features have not been addressed in this version because it is outside of the scope of the project and would add significant delays for adoption of the Procedures. Delineation reports should be provided by the applicant and verified by Water Board staff. Water Board staff will rely on determinations made by the Corps when identifying waters of the U.S. and applicants should use the same wetland delineation procedures for identifying wetland waters of the state that are outside of federal jurisdiction. Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. It is not expected that these delineations will diverge greatly from what is already being prepared for the Corps. Applicants are encouraged to contact the appropriate Water Board for consultation on determining jurisdiction.

Comment Number	Comment	Response
46.10	New/Supplemental Permitting Requirement: Prepare and submit application, including an alternatives analysis New/Increased Regulatory Burden: Includes O&M, which by definition cannot be conducted in another location Consistent with USACE and CDFW regulation?: No	See general response #1.
46.11	New/Supplemental Permitting Requirement: Prepare and submit application, including an alternatives analysis New/Increased Regulatory Burden: Includes activities that under current rules would be performed pursuant to a Nationwide Permit and CWA section 401 water quality certification Consistent with USACE and CDFW regulation?: No	See general response #1.
46.12	New/Supplemental Permitting Requirement: Prepare and submit application, including an alternatives analysis New/Increased Regulatory Burden: Potential conflicts between USACE's and Water Boards' Least Environmentally Damaging Practicable Alternative (LEDPA) determinations	The Procedures require that the Water Boards defer to the Corps determinations on the adequacy of the alternatives analysis, unless the Water Boards were not provided an opportunity to consult during the development of an alternatives analysis, the alternatives analysis does not adequately address issues raised during consultation, or the proposed alternatives do not comply with water quality standards. Deference to the Corps is intended to reduce duplication of requirements from both agencies. Applicants are encouraged to engage the Water Boards before beginning the application process to ensure that a proposed project does not violate state water quality standards.

Comment Number	Comment	Response
46.13	New/Supplemental Permitting Requirement: Analyze and provide compensatory mitigation New/Increased Regulatory Burden: Use of watershed profiles, which do not now exist and encompass all lands within a watershed, including those privately owned and not publicly accessible Consistent with USACE and CDFW regulation?: No	It is not a new regulatory requirement that a permittee must provide compensatory mitigation for unavoidable impacts to state waters, but the watershed profile commensurate with project impacts requirement is new. A basic watershed profile for the watershed can be easily generated on the EcoAtlas website (www.ecoatlas.org), which may be sufficient for smaller projects. Local watershed group/resource agencies may be able to provide further information. The use of a watershed approach is consistent with the Corps' regulatory program. The federal compensatory mitigation rule (33 C.F.R. part 332) requires the Corps to apply a watershed approach for compensatory mitigation decisions, which relies on information provided by the applicant or other sources. Thus, information and assessment of the abundance, type, and condition of aquatic resources in the project evaluation area is currently key to the Corps' application of the watershed approach and would also satisfy information needs under the Procedures. For concerns regarding consistency with CDFW's regulation program, see general response # 10.
46.14	New/Supplemental Permitting Requirement: Analyze and provide compensatory mitigation New/Increased Regulatory Burden: Prioritizes in- watershed mitigation, which is different from USACE prioritization of mitigation banks, and results in different compensatory mitigation requirements Consistent with USACE and CDFW regulation?: No	The federal 404(b)(1) guidelines and the Procedures both express the same general preference for in-watershed mitigation and soft preference for mitigation banks. The language from the State Supplemental Guidelines is the same as section 230.93(b)(1) from the federal guidelines. See also general response #8.

Comment Number	Comment	Response
46.15	New/Supplemental Permitting Requirement: Analyze and provide compensatory mitigation New/Increased Regulatory Burden: Unspecified, but different methodology for calculating mitigation obligations: declines to adopt USACE's California Rapid Assessment Method and Standard Operating Procedure, used to determine compensatory mitigation requirements, but does not propose an alternative. Consistent with USACE and CDFW regulation?: No	See general response #8. As discussed in section 6 of the Staff Report, when a project includes unavoidable impacts to waters requiring mitigation, the Procedures require an assessment of the overall condition of those waters using an assessment method approved by the Water Boards. CRAM [California Rapid Assessment Method] is one such assessment method that is likely appropriate for assessing overall condition because it has been peer reviewed and has been used to assess various wetland types common to California. An assessment of the impacted aquatic resource will help determine the condition and function of that resource and the appropriate compensatory mitigation ratio for that adverse impact. This is consistent with the federal procedures for establishing a mitigation ratio (see Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines For South Pacific Division USACE, section 3.4, pg 16).
46.16	New/Supplemental Permitting Requirement: Analyze and provide compensatory mitigation New/Increased Regulatory Burden: With a broader, more inclusive definition of "wetlands," a corresponding increase in compensatory mitigation obligation. Consistent with USACE and CDFW regulation?: No	It is not a new regulatory requirement that a permittee must provide compensatory mitigation for unavoidable impacts to state waters. The technical wetland definition also does not expand the Water Boards' jurisdiction over waters of the state, which is broad. Rather, the Procedures are intended to increase consistency across the Water Boards by providing a framework for determining whether features that meet the technical wetland definition are a water of the state. Also, see general responses

Comment Number	Comment	Response
		general responses #4 and #10.
46.17	New/Supplemental Permitting Requirement: Analyze and provide compensatory mitigation New/Increased Regulatory Burden: Requires compensatory mitigation necessary to address permanent, net loss of aquatic resources for temporal impacts that are addressed by restoration, particularly if restoration effort takes more than 1 year	Temporal loss, as defined in the State Supplemental Guidelines, is "the time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site." Under the State Supplemental Guidelines section 230.93(f), a higher mitigation ratio than may be applied for a number of reasons, including temporal loss. If compensatory mitigation is initiated prior to, or concurrent with, the permitted impacts, the permitting authority may determine that compensation for temporal loss is not necessary, unless the resource has a long development time (State Supplemental Guidelines, section 230.92). The Corps have implemented the same mitigation requirements since 2008. Neither the Procedures nor the Corps' regulations specify a time period after which compensatory mitigation is required for temporal loss, such as 1 year as stated by the commenter.

Letter 49: Kelly, Lisa

Comment Number	Comment	Response
49.1	Please take whatever measures necessary to institute protections for all California wetlands.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 51: Los Angeles Department of Water & Power

Comment Number	Comment	Response
51.1	As written, the Draft Procedures have the potential to delay the commencement of critical maintenance and construction projects, which could cause reliability issues for both LADWP's Water and Power systems. LADWP in mandated by its City Charter to provide reliable water and power and therefore, it is critical that LADWP be able to obtain any permits in a timely manner to deliver reliable water and power to the millions of people who depend on it.	One goal of the Procedures is to reduce application processing time by clarifying the information needed for a complete application and the criteria for permit approval. Uniform statewide procedures allow for orders to be organized similarly and common application forms to be used, which should further expedite the permitting process.
51.2	The Draft Procedures expand the definition of wetlands beyond the areas currently regulated by the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA). However, one of the main goals of the Draft Procedures is to provide consistency with the delineation process by relying on the Corps' delineation procedures for non-federal wetland areas. The proposed definition does not appear to	See general response #4. In addition, waiting for resolution regarding federal jurisdiction would unduly delay the adoption of the Procedures. Delaying adoption of the Procedures would delay the opportunity to address current gaps in protection for state water, provide uniform procedures for the review and approval of dredged and fill material discharge applications, and improve restoration outcomes for wetlands and waters of the

Comment Number	Comment	Response
	be consistent with this goal and has the potential to cause more confusion. Since the Waters of the United States (WOTUS) rule is currently stayed by the U.S. Court of Appeals for the Sixth Circuit, it may be appropriate to wait until this rule has been finalized before redefining the current wetlands definition. The State Board's goal may be accomplished by the Court's ruling.	state.

Comment Number	Comment	Response
51.3	Moreover, the proposed state wetlands definition may include water features not intended by the SWRCB, such as puddles and ditches, placing an unnecessary additional workload on limited resources for both the regulated community and the regulator. Currently, the regulations allow the permitting authority to determine whether it has jurisdiction on a water feature on a case- by-case basis. Therefore, expanding the definition of wetlands at this time does not appear necessary.	The Procedures provide a technical wetland definition and jurisdictional framework for determining wetlands that are waters of the state and subject to Water Board regulatory authority thereby reducing workload associated with determining if a wetland is also a water of the state. Also see general response #11.
51.4	Also, the State Water Board states in its staff report on page 56, that since the California Code of Regulations, title 23, Section 3831 (w) was adopted prior to the Supreme Court decisions such as SWANNC and Rapanos, it is the intent of the State Water Board to include both historic and current definitions in order to broaden the WOTUS determination. In addition, the State Board's new definition would include artificial wetlands that "resulted from historic human activity and has become a relatively permanent part of the natural landscape" (Section II, Page 2, Lines 46-47). Using historic definitions is problematic given the long history of litigation and uncertainty.	See general response #2.

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51.5	Finally, the last sentence in Section II, Page 2, Lines 61- 62 states: "If an aquatic feature meets the wetland definition, the burden is on the applicant to demonstrate that the wetland is not a water of the state". LADWP believes this shifts the burden of proof to the discharger, when in fact the SWRCB or RWQCB should continue to prove it has jurisdiction.	The Procedures provide a jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. The jurisdictional exclusions rely upon facts that the applicant will be in a better position to provide than the State Water Board; therefore, it is appropriate that the burden of proof falls on the applicant to demonstrate that the exclusion applies.
51.6	LADWP requests that the wetlands definition not be changed at this time; however, if the SWRCB does make a change, LADWP requests that any revision be consistent with the Corps delineation process to avoid confusion with the term "wetlands."	See general response #4.

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51.7	To promote consistency among the RWQCBs in determining whether a particular water feature is a Water of the State, LADWP also requests that the specific criteria and process for this case-by-case determination be included in the Draft Procedures, and that the guidance be developed using a stakeholder process for input and comments from all stakeholders.	The Procedures have not been revised in response to this comment. Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. Delineation reports should be provided by the applicant and verified by Water Board staff. Water Board staff will rely on determinations made by the Corps when identifying waters of the U.S. and applicants should use the same wetland delineation procedures for identifying wetland waters of the state that are outside of federal jurisdiction. It is not expected that these delineations will diverge greatly from what is already being prepared for the Corps. Applicants are encouraged to contact the appropriate Water Board for consultation on determining jurisdiction. Also see general response #11.
51.8	LADWP believes that the Draft Procedures as written will result in a significant increase in regulatory workload considering the following: The broad definition of wetlands; The flow chart that leads to inclusion no matter the path; Requirements for alternatives analysis. LADWP is concerned as obtaining a 401 or Waste Discharge Requirements (WDR) is an already lengthy process, and if the SWRCB or RWQCB staff experiences an increase in regulatory workload this might extend the	See general response #6.

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	process even more. LADWP is also concerned that the increase in regulatory workload will be more costly, resulting in a financial burden for both the applicant and the agency. This additional regulatory and financial burden could lead to project delays, including delays for critical maintenance and health and safety related projects, and delays for projects that are consistent with the State's ambitious goals to address climate change, such as renewable energy projects.	
51.9	The Draft Procedures require the permitting authority to either deem the initial application complete or request additional information within 30 days of receiving the initial application. Once the applicant submits the additional information, the permitting authority has 30 days to determine whether the application is complete. Once deemed complete, there is a 30 day public comment period, and if there are comments then the permitting authority must respond to comments, further delaying the issuance of the permit. However, the Draft Procedures do not explain what happens if the permitting authority does not respond after the 30 day timeframes. LADWP has often experienced a request for information more than 30 days after submitting the initial application, and then further requests for information after each subsequent submittal of information. This often results in resubmitting information that had previously been submitted, which causes significant delays. LADWP has experienced a 401 reissuance that has taken	The Procedures have not been revised in response to this comment. State regulatory timeframes pertaining to the issuance of 401 certifications are established by the California Permit Streamlining Act (PSA), California Government Code § 65920 et seq., which was enacted in 1977. The Procedures do not introduce any new requirements that would conflict with the PSA, or add elements that would extend certification timeframes. Section 65943 (a) of the PSA provides that the Water Board has 30 days in which to determine whether an application is complete, and Section 65943(b) provides an additional 30 calendar days after receipt of supplemental information. The Procedures are consistent with these requirements in that they specify that applications be reviewed for completeness within 30 days of receipt and deemed complete within 30 days of receiving all of the required items. Applicants may submit items from section IV.A.2 with their initial application to avoid waiting the additional 30-day period for Water

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	more than four years. Similarly, other project 401 s have taken more than a year, which has delayed the construction schedule.	Board staff to list items needed on a case-by-case basis. It should be highlighted that complete application requirements, listed in section IV.A.2 are frequently requested during the Water Boards' existing application review process; these requirements are not new. The Procedures simply provide greater clarity of information necessary to make certification decisions.
51.10	Additionally, the Draft Procedures add a climate change analysis and alternatives analysis, which will even further extend the permitting process and has the potential to cause undue burden and hardship with regards to grid reliability and lost opportunities with critical time-sensitive projects.	See general response #7.
51.11	LADWP requests that the Draft Procedures include language that states the application is considered complete if there has been no response from the permitting authority after 30 days.	See response to comment 51.9
51.12	LADWP also requests that the Draft Procedures include language that requires the permitting authority to be more specific with their requests, and to avoid making repetitive requests for information.	As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in Sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal thereby reducing the number of information requests and expediting the application review process.

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51.13	The Draft Procedures state that following the submission of the initial project application, the permitting authority may require the applicant to perform an alternatives analysis to deem the application complete. LADWP is particularly concerned that alternatives analyses may be required for routine maintenance and other projects that have the potential to impact health and safety. Conducting an alternatives analysis during the 401 certification process or WDR permitting process would be duplicative and significantly delay the certification process and project schedules. The Corps performs an alternatives analysis for federal waters, when required, and alternatives for state waters are considered through the CEQA process. LADWP thus proposes removing the alternatives analysis requirement.	See general response #1.
51.14	The Draft Procedures require applicants to submit a draft mitigation plan for review prior to certification, and to obtain approval of a final mitigation plan before commencing work in Waters of the State. The latter requirement will extend the already lengthy certification process, and likely will cause unnecessary delays in project schedules.	As drafted, the Procedures indicate that a draft compensatory mitigation plan is required before an application may be deemed complete. Where possible, the Water Boards will work with applicants during the application review stage. Compensatory mitigation plans area approved by issuance of an Order. If a final compensatory mitigation plan is not approved before the issuance of an Order, the Water Boards may include as a condition in an Order that the permittee will need final approval of a mitigation plan prior to impacting waters of the state. In these cases, the Water Boards would approve the mitigation plan by amending the original

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		Order to include the final compensatory mitigation plan. Such a condition would allow the permittee the flexibility to begin work while completing the final plan, as long as work is not impacting waters of the state. As stated in section 6.6 of the Staff Report, the Procedures, as a whole, would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews, including compensatory mitigation plans. Reviewing and approving compensatory mitigation plans at the application review and approval stage will also help to ensure that loss to waters are adequately compensated for.
51.15	Finalizing a mitigation plan before commencement of a project is difficult due to the extensive time involved for the administrative and permitting process in order to finalize an individual mitigation project. In addition, if a mitigation bank were to be used there is an extensive process for obtaining the necessary and critical documents needed to secure the land for credits and preparation of the agreement between the parties involved. Further, a mitigation bank that is in the process of being certified (which can take years) may not be available by the end of the project. If the applicant undertakes its own mitigation project, it would	See response to comment #51.14.

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	require that all other regulatory approvals for the proposed mitigation be finalized before the plan is considered final and approved by the permitting authority. Therefore, approving a mitigation plan may not be feasible until after the construction project has begun. The requirement to have a final mitigation plan in place will cause undue hardship and problems with the construction schedule, procurement process, and any planned outages that are required for the work. In addition, due to schedule delays, this could cause grid reliability issues and missed opportunities to include critical infrastructure for new and greener technologies, such as renewables, on the grid. For example, if LADWP's Beacon Solar project had not been able to commence without the mitigation plan fully vetted and approved, it would not have been able to move forward and that would have forfeited the renewable project, resulting in not being able to meet the State mandates.	
51.16	LADWP proposes the applicant be required to submit only a draft mitigation plan prior to the permitting authority's issuance of either the WDR or 401 certification in order to commence work; this mitigation plan would be finalized before project completion. This would avoid delays with necessary construction projects and/or maintenance.	The Procedures have not been revised in response to this comment. Approving compensatory mitigation plans prior to impacting waters of the state is critical to ensure that permanent and temporary losses are adequately planned and mitigated for in order to ensure no net loss of California's waters. Also, see response to comments #51.14 and #51.15 (above).

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51.17	The Draft Procedures state that, following the submission of the initial project application, the permitting authority may require "an assessment of the potential impacts associated with climate change related to the proposed project and any proposed compensatory mitigation, and any measures to avoid or minimize those potential impacts." LADWP believes that this assessment, if required, should be conducted earlier during the CEQA process.	See general response #7.
51.18	The Draft Procedures state that following the submission of the initial project application, the permitting authority may require supplemental field data from the wet season if the wetland area delineations were conducted during the dry season. LADWP would like clarification on what kind of supplemental field data will be requested, and how the data will be obtained if wet season field data has not been conducted at the project site previously. If supplemental field data can only be obtained during the next wet season, there will be significant delays that could postpone the project for months or years. Many LADWP maintenance projects are time-sensitive and cannot wait until the following wet season data is obtained. For example, outages must be scheduled months in advance and maintenance must be performed within the time frame of the outage in order to maintain water and power system reliability, and would not be able to wait for the wet season to collect data. LADWP suggests that the Draft	See general response #7.

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	Procedures include an exemption from obtaining supplemental field data from the wet season if the project activity is time sensitive and cannot be delayed, such as operations and maintenance projects, which would compromise grid reliability.	
51.19	The Draft Procedures require that an applicant obtain approval of a final restoration plan for temporary impacts before issuance of the Order. This requirement likely will cause delays in the certification process, which in turn would cause delays in projects schedules. LADWP proposes that applicants only be required to submit a draft restoration plan prior to issuance of the Order, in order to minimize delays. Additionally, the temporary impacts of the project can be evaluated more accurately during the duration of the project or once the project has been completed. Therefore, the draft restoration plan can be finalized with permitting authority's approval.	The Procedures were revised in response to this comment. Generally, the Procedures require the submittal of a final restoration plan prior to issuance of the Order to ensure that all requirements necessary for restoring temporary impacts are included as conditions of the Order. It is appropriate to include the restoration plan as a condition of the Order to provide regulatory certainty to the applicant as well as reassurance that these areas will be properly stabilized and returned to pre-project conditions. It is not uncommon that these impact areas are re-assessed during the duration of a project which commonly results in an amendment to the Order. In some cases, the permitting authority may approve the final restoration plan after issuance of the Order, but prior to initiation of the temporary impacts, consistent with section IV.B.4.
51.20	LADWP is concerned that the SWRCB's proposal has the potential to expand SWRCB and RWQCB jurisdiction and involvement in activities that are currently recognized under federal exemptions and/or nationwide permits (NWPs). Some of these exemptions provide reasonable and necessary	See general response #1.

Comment Number	Comment	Response
	avenues for routine activities, such as maintenance, maintaining grade, and maintaining the capacity of flood and sediment control basins, that have the potential to impact health and safety. As detailed throughout these comments, the SWRCB proposal expands the definition of wetlands, will require alternatives analysis for projects where an analysis had not previously been required, and has the potential to result in significant delays. Prior to adopting the proposed policy, the SWRCB should work with stakeholders to develop modifications that would ensure consistency with NWPs and allow timely implementation of projects involving health and safety and routine maintenance.	

Letter 52: Lamont, Juliet. Creekcats Environmental Partners LLC

Comment Number	Comment	Response
52.1	I am writing to urge you to adopt the proposed statewide wetlands policy regulation ("Procedures for Discharges of Dredged or Fill Materials to Waters of the State"), and to put your full force behind its implementation and enforcement. California has lost over 90% of its historic wetlands, and we must do all we can to stop further harm, protect what remains, and rebuild some of what we've lost.	The commenter's request for adoption is noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

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52.2	Despite all of this, the President has recently acted to roll back federal protections for wetlands. This is wholly unacceptable, and the state must do all it can to protect our resources from federal inaction. The State Water Resources Control Board stands in a unique position to lead in the face of federal retreat. We urge you to use your authority to adopt the statewide wetlands policy swiftly and decisively. We cannot afford to wait any longer.	The commenter's request for adoption is noted.

Letter 53: Law Offices of William Fjellbo

Comment Number	Comment	Response
53.1	My name is William Fjellbo and I am writing to you today to express my support for the proposed statewide wetland regulation ("Procedures for Discharges of Dredged or Fill Materials to Waters of the State"), and ask that you and the other board members do the same. We have lost over 90% of the historic wetlands in the state and we must do all we can to stop further harm, protect what remains, and rebuild some of what we've lost.	The commenter's support of the Procedures is noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.
53.2	Despite all of this, the President recently acted to roll back federal protections for wetlands. This is wholly unacceptable, and the state must do all it can to protect our resources from federal inaction. The State Water Resources Control Board stands in a unique position to lead in the face of federal retreat. I urge you to use your authority to adopt the statewide wetlands policy.	The commenter's request for adoption is noted.

Letter 54: Law Office of Thomas D. Roth on Behalf for Balanced Land Use, Inc.

Comment Number	Comment	Response
54.1	CBLU opposes the State Water Board's draft State Wetland Definition and Procedures for Discharge of Dredged or Fill Materials to Waters of the State. Presently, there are too many overlapping regulatory regimes protecting wetlands and jurisdictional wetlands. Another one is not needed.	The commenter's opposition to the Procedures is noted. See general response #10. In addition, please note that the Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The Procedures are intended to clarify for applicants what is required for a complete application and the criteria for permit approval, which will be consistent across the Water Boards.
54.2	Federal law protects wetlands and having multiple state agencies regulate the same resource, except with differing, complicated and inconsistent rules (seemingly designed to be traps for the unwary) unduly burdens property owners with marginal, if any, additional benefit, to the environment. The State Water Board should scrap the proposed new definition and rules.	The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. Also see general response #10.

Letter 55: Lawrence, Kathryn

Comment Number	Comment	Response
55.1	I am writing to tell you that I strongly support the Wetlands Rule that you are proposing. We desperately need to protect our remaining wetlands here in California. As a resident of Orange County, I see all around me the beautiful wetlands in our area. I have often seen migratory birds resting and feeding in our these areas. Please continue to push for this needed protection of these wetlands. California must step up and fight against the federal lifting of restrictions so that developers will not be able to destroy more of this natural habitat.	The commenter's support of the Procedures is noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 56: Lipmanson, Don

Comment Number	Comment	Response
56.1	Those years of experience, followed by so much evidence that our state is warming that is threatening many species of birds, reptiles and amphibians whose existence depends on such habitats leads me to urge you to quickly adopt a statewide wetlands policy that better protects existing wetlands.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.
56.2	Finalizing a comprehensive wetlands policy should go far towards preserving CA's wetlands and the wildlife that required them fir survival. But first, in addition to preserving existing wetlands to the maximum extent feasible (even if that blocks many development applications), the Board also needs	See general response #8 in regard to compensatory mitigation requirements. The Procedures have not been revised in response to the comment on agricultural exemptions. Provisions in the Procedures mirror federal processes and it is a stated goal to align with the

Comment Number	Comment	Response
	to beef up compensatory mitigation requirements so there is zero net loss of current wetland acreage. This includes eliminating agricultural exemptions from wetland preservation.	Corps, to the extent practicable.

Letter 57: LoBianco, Roman

Comment Number	Comment	Response
57.1	Protecting and restoring California's wetlands should be a priority because of the major role they play in ecosystem health.	Comment noted.
57.2	But sadly, California has lost over 90% of its historic wetlands. This is extremely disturbing, and you should be both very alarmed, as well as very committed to stop further loss under any circumstance. State jurisdiction over waters and wetlands is much broader than federal law, so the Water Board has clear authority to do what's necessary to prevent wetland destruction and restore some of what we've already lost.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.
57.3	My family and I fully support the Wetlands Rule and implore you to ratify and enforce it, in order to save what remains of California's wetlands.	The commenter's support of the Procedures is noted.

Letter 58: Lucas, Elizabeth

Comment Number	Comment	Response
58.1	I am writing to request that you adopt the draft Procedures with the changes suggested below. The implementation of the Procedures would slow down further losses of wetlands and may result in the restoration of some of the acreage and functions of the over 90% of California's lost historic wetlands. It is particularly critical that California act now to protect its remaining wetlands given the uncertain fate of federal wetlands regulations in the aftermath of President Trump's decision to roll back federal protections for wetlands.	The commenter's request for adoption is noted. See responses to suggested changes, below. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values. However, current applicants are not expected to mitigate for historic wetland losses, but are expected to fully compensate for any impacts to state waters that their projects may incur.
58.2	Executive Order W-59-93 identifies the duplicative and inconsistent nature of wetlands programs and California's policy to streamline regulatory permitting processes. The Procedures address these concerns well starting at line 1167, Appendix A, Subpart J, §230.93 (General compensatory mitigation requirements.), Paragraph (j). Please clarify and strengthen the intent of Paragraph (j) as follows.	The recommendation to improve the clarity of Appendix A, Subpart J, §230.93, Paragraph (j) is appreciated. Please see specific responses, below.
58.3	Create a new footnote #32 and move to it the examples provided in Paragraph (j)(1) of other programs as follows (including the added text): "Examples of such other programs include but are not limited to: (a) tribal, state, or local wetlands regulatory programs, (b) other federal programs such as the Surface Mining Control and Reclamation Act, Corps civil works projects, and Department of Defense military construction	The Procedures have not been revised in response to this comment. The list of other programs set forth in 230.93(j)(1) is not exhaustive. Other programs, such as programs implemented pursuant for state and federal Endangered Species Act or for Natural Community Conservation Plans and Habitat Conservation Plans, may also met the criteria set forth in 230.93(j)(1).

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	projects, and (c) compensatory mitigation under the state and federal Endangered Species Act or for Natural Community Conservation Plans and Habitat Conservation Plans.	
58.4	Now, add to what is left of Paragraph (j)(1) the underlined text to Paragraph (j)(1) as follows: *Compensatory mitigation projects for Orders may also be used to satisfy the environmental requirements of other programs[32] if the mitigation is consistent with the terms and requirements of those programs and subject to the following considerations.*	See the response to Comment #58.3.
58.5	Despite the added text to new footnote #32, retain the text at Paragraph (j)(3) to reinforce the importance of consistency with or at least not undermining the compensatory mitigation requirements of NCCPs and/or HCPs.	See the response to Comment #58.3.

Comment Number	Comment	Response
58.6	The draft Staff Report prepared in support of the draft procedures correctly concludes that "compensatory mitigation throughout the state has not been adequate to prevent loss in the quantity and quality of wetlands that qualify as waters of the state, and other waters of the state, in California" (page 53). The Staff Report also states the Procedures include, "clarification of compensatory mitigation requirements with the intent of making compensatory mitigation more robust and successful in California" (page 53), but at least three aspects of the Procedures call this intent into question. The changes offered below would address these shortfalls.	Comment noted. Please see responses to Comments #58.7-15, below, for responses to the recommended changes to the Procedures.
58.7	The procedures allow for a less than one-to-one compensatory mitigation ratio at Line 305 et seq. of Section IV.B.5.c. Given the overall loss of wetland acreage and functions in California to date despite the State's "no net loss" policy, nothing less than a one-to- one ratio is acceptable, and that is usually insufficient. Please omit the allowance for anything less than one-to-one.	See general response #8.

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58.8	The Staff Report and studies of wetland mitigation elucidate reasons why wetland mitigation often fails to adequately mitigate for the loss of wetland functions. One reason is the lack of adequate long-term management (including monitoring) of the mitigation areas whether inside or outside mitigation banks. Hence, the following comments, which apply only to mitigation outside of mitigation banks.	Comment noted. See responses to comments #58.9-15, below.
58.9	Starting at line 1469, Appendix A, Subpart J, §230.97 (Management) states, “A real estate instrument, management plan, or other long-term protection mechanism used for site protection of permittee- responsible mitigation must be approved by the permitting authority in advance of, or concurrent with, the activity causing the authorized impacts” (emphasis added). Please omit “or concurrent with” as it can take months, sometimes years, to negotiate and execute such instruments, plans, and/or mechanisms. The dredge/fill activity whose mitigation necessitates such instruments and/or mechanisms should not be authorized to commence prior to the execution of the instruments unless (a) a fundingmechanism for long- term management of the mitigation area has already been fully funded, (b) the acquisition of all the credits has occurred if all the mitigation is to be through mitigation bank credits, the acquisition of all the credits, or (c) the full in-lieu fee has been paid if all the mitigation is to be through this mechanism. This requested stipulation is contemplated by Subparagraph 4 in §230.97 which states, “For	Appendix A of the Procedures was not revised in response to this comment because Appendix A was intended to align state practices with federal practices to the extent practicable. The current language, “concurrent with,” still requires that the long-term protection mechanism be approved at the same time as the activity causing authorized impacts, such that there is sufficient certainty regarding the long-term protection mechanism. This requirement, in combination with the other management requirements set forth in section 230.97 and other compensatory mitigation requirements, are sufficient to ensure the long-term protection and management of the compensatory mitigation.

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	permittee-responsible mitigation, any long-term financing mechanisms must be approved in advance of the activity causing the authorized impacts." This requested stipulation, however, is that the funding mechanism be fully funded, not just approved, prior to onset of the authorized activity.	
58.10	Starting at line 1514, Appendix A, Subpart J, §230.97 (Management) states, "(2) A long-term management plan should include a description of long-term management needs, annual cost estimates for these needs, and identify the funding mechanism that will be used to meet those needs." Please add a requirement that the cost estimates be based on an agency-approved property analysis record (PAR) (http://www.ecosystemmarketplace.com/resources/ pro perty-analysis-record/) or similar software program.	There are several software programs available to aid applicants in estimating long-term management costs for mitigation projects. A well-known example is the PAR developed by the Center for Natural Lands Management (CNLM), which has been widely and successfully used throughout the nation. However, the Procedures do not require that applicant purchase or use a specific type of software, as software is typically upgraded often. However, the applicant should be fully transparent in developing long-term management budgets for proposed mitigation sites and should consult with the Water Boards on the appropriateness of using a specific model.
58.11	Starting at line 1517, Appendix A, Subpart J, §230.97 (Management), the draft Procedures further elaborate on the long-term financing. Again, please add a requirement that the cost estimates be based on an agency-approved PAR; correctly prepared, PARs account for inflation and contingency funding needs.	See the response to comment #58.10.
58.12	Starting at line 307, the Procedures state, "A reduction in the mitigation ratio for compensatory mitigation will be considered by the permitting	Section IV.B.5.c includes buffers as one of a number of considerations for establishing the amount of mitigation required by the permitting authority.

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	authority if buffer areas adjacent to the compensatory mitigation are also required to be maintained as part of the compensatory mitigation management plan." This equates to crediting buffers as wetland acreage. 1) First, this seems inconsistent with the Staff Report's assertion that "buffers are not included in the calculation of the ratio" (pages 80 and 82). By allowing a reduction in the mitigation ratio if a buffer is provided, this provision essentially accounts for the buffer in the determination of what the ratio will be. 2) Second, the Staff Report states, "If buffers are required by the permitting authority as part of the compensatory mitigation project, compensatory mitigation credit will be provided for those buffers" (page 33, emphasis added), which makes my former point. 3) Third, this contravenes California Fish and Game Commission's policy which states, "In no case shall such buffers be credited as wetland acreage necessary to achieve compliance with the requirements of the Commission's policy regarding retention of wetland acreage."[footnote] 4) Fourth, this makes no biological sense and would further compromise the no-net loss policy. The mitigation ratio should be established to mitigate the loss of acreage and functions of wetlands. A buffer should be provided to better ensure that the lost wetland functions are realized and persist.	As stated in this section, if the mitigation plan provides for management of buffers around the mitigation site, the permitting authority may consider a reduction in the mitigation amount required. The provision of managed buffers lowers the risk that the mitigation project will fail for the reasons cited, and as such, a lower mitigation ratio may be allowed. This section is consistent with 230.93(h)(i), which specifies that "compensatory mitigation credit" may be given to buffers. In this context, "compensatory mitigation credit" means consideration of managed buffers in setting the appropriate mitigation amount; credit is not given as wetland acreage. This section is also consistent with section 6.8 of the Staff Report, which states that the buffers are not included in the calculation of the ratio. Instead, buffers are a consideration in setting the mitigation ratio, but not included in the wetland acreage portion of the actual mitigation ratio itself because buffers are not considered wetlands acreage.

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58.13	The definition for “buffer” starting at line 796 is concerning. It states, “Buffer means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with waters of the state from disturbances associated with adjacent land uses.” A buffer to wetland or habitat should be upland habitat or at least a combination of primarily upland with a transition to the wetland.	The Procedures have not been revised in response to this comment. The definition of ‘buffer’ is generalized because a buffer may occur around different aquatic resource types. While wetland buffers are primarily upland habitats, a wetland is often times a buffer to other aquatic resource types, such as streams of lakes, as wetlands are often times a transitional area between open water and terrestrial landscapes.
58.14	The Procedures do not stipulate any minimum requirements for buffers such as (a) width from the outside edge of the wetland or (b) allowed human activities in buffers (there should be none in the biological buffers). With no such minimum requirements, there is no assurance about the efficacy of the buffers in provided the biological protection they should.	The proposed Procedures contain no minimum requirements for buffers, because buffers are not currently a requirement for mitigation areas. In addition, not all mitigation sites would require a buffer. For example, if a mitigation site is located in areas where the surrounding landscape is preserved or protected by zoning, general plans or conservation easements, buffers may not be necessary. Also, buffer size is based on a number of considerations and should not be pre- determined, but designed specifically for the site and resource conditions.

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58.15	Based on the foregoing observations in 2(c), please (a) remove the option of reducing the mitigation ratio if a buffer is provided, (b) require a buffer for all wetland mitigation, (c) increase the mitigation ratio if a buffer is infeasible, (d) redefine buffer to exclude from it the very habitat it is intended to protect, and (e) establish minimum requirements for buffers or require that the permitting agency base the requirements for buffer widths etc. on scientific literature – there is much literature that informs on the issue of edge effects and buffers needed to minimize them.	The Procedures have not been revised in response to this comment. See the responses to comments #58.12, #58.13, and #58.14.
58.16	To minimize adverse effects, the Procedures require, “Timing discharge to avoid spawning or migration seasons and other biologically critical time periods” [Subpart H – Actions to minimize Adverse Effects, §230.75 Actions affecting plant and animal populations, Subparagraph (e) (line 749)]. It is unclear whether this applies only to aquatic species (though it seems it does) or includes species that use uplands some part or all of the year, such as amphibians and birds. Given the potential for significant adverse effects of dredge and fill activities on sensitive species using upland habitat adjacent to those activities, please clarify that this provision is intended to apply to both aquatic and upland species or add provisions to address the need to avoid such effects on upland species, by either seasonal restrictions or otherwise.	As explained in the introductory note to Subpart H, the measures listed in Subpart H are examples of the types of possible steps that may be taken in order to comply with section 230.10(d). Whether such actions are appropriate for any given project will need to be analyzed on an individual basis. To the extent that actions set forth in 230.75 are appropriate for a given project, the avoidance actions are not necessarily limited to aquatic species.

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58.17	Definitions. Please further clarify the meaning of "permittee-responsible mitigation" by modifying the definition (starting on line 857) for the term - distinguish it from mitigation at a mitigation bank or in-lieu fee mitigation.	The current definition for "permittee-responsible mitigation" is consistent with federal regulations and sufficiently clear.

Letter 59: Marin Audubon Society

Comment Number	Comment	Response
59.1	In particular, we support the revised definition of wetlands and we appreciate the clarification of procedures regional water boards must follow in deciding whether to allow discharges. Changing the definition of wetlands to include areas that are unvegetated and that do not have a hydrologic connection to a larger water body as wetlands is essential. This will fill a major gap in wetland regulation and significantly reduce the risk of losing more wetlands throughout the state. Isolated wetlands serve as important source of water for both birds and mammals, resting and foraging habitat for shorebirds, flood protection. to name a few benefits. The revised definition is long overdue.	The commenter's support of the proposed wetland definition is noted.

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59.2	Mitigation Ratio: The amount of mitigation required is proposed to be determined on a project-by-project basis with a minimum requirement of one acre of mitigation wetland for one acre of wetland or stream length filled. A minimum 1:1 ratio in itself is too low, and even that could be further reduced on a case-by- case basis by Regional Boards if the project provides buffer zones and/or is covered by a watershed plan. All wetlands should have buffers, otherwise known as transition zones, for the reasons mentioned in the document and also because transition zones are essential for habitat for many species. Tidal marsh- dependent endangered species, endangered Ridgway's Rails and Salt Marsh Harvest Mouse must leave wetlands when the water levels are high, and other special status species, such as San Pablo Song Sparrow and California Black Rail, nest, forage and seek cover in transition zones. Buffers are also needed to mitigate human use impacts, such as noise, lights and litter, from the use of adjacent trails, and to accommodate climate change and sea level rise. Further, a ratio of 1:1 would not compensate for temporal losses and potential delay in restoring mitigation wetlands.	See general response #8. The Procedures do not require buffers for all mitigation sites because buffers may not be feasible in all locations. In addition, not all mitigation sites would require a buffer. For example, if a mitigation site is located in areas where the surrounding landscape is preserved or protected by zoning, general plans or conservation easements, buffers may not be necessary. Also, buffer size is based on a number of considerations and should not be pre-determined, but designed specifically for the site and resource conditions.
59.3	Mitigation Banks: The Procedures favor mitigation banks and indicate that they should be located within the watershed of the wetland loss. Banks are described as being environmentally preferable because they "usually involve consolidating compensatory mitigation projects where ecological	Both the Procedures and federal regulations require an applicant to avoid and minimize potential impacts to wetlands to the extent practicable. Compensatory mitigation is only considered after all efforts have been made to first avoid impacts, and then minimize any impacts that

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	appropriate, consolidating resources, providing financial planning and expertise...reducing temporal bosses and uncertainty over project success ." While this may be the case with some banks, it is certainly not true with all banks, e.g. those that have not successfully produced or sustained wetland resources such as the Burdell Bank in Marin County. Marin Audubon Society does not support the concept of mitigation banks because it is our experience that they facilitate the loss of wetlands by providing an avenue to avoid consideration of not filling wetlands.	remain. For unavoidable impacts, the permittee must provide compensatory mitigation to replace what is lost. The availability of mitigation banks does not remove this requirement. The Procedures generally favor mitigation banks and in-lieu fee programs over permittee-responsible mitigation because they usually involve consolidating mitigation projects where ecologically appropriate, pool financial planning and scientific expertise, reduce temporal losses of functions, reduce uncertainty over project success, and are overseen by multiple agencies. However, the Water Boards' preference for mitigation banks over permittee- responsible mitigation is a soft preference because the permitting authority must determine the appropriate type of compensatory mitigation based on what would be environmentally preferable in a specific case. This hierarchy and soft preference is consistent with the Corps' 404(b)(1) Guidelines.
59.4	The Procedures do not address several aspects of critical importance: 1) Whether a Regional Water Board has discretionary authority to not allow use of banks. The San Francisco Bay Regional Water Board does not endorse the use of mitigation banks. We support this position and believe that requiring it to permit the use of mitigation banks would lead to reduced regulatory oversight and the loss of wetlands in this region.	According to the Procedures, the permitting authority determines type and location of mitigation, based on a watershed approach, evaluating what is the most environmentally preferable. The Procedures generally favor mitigation banks and in-lieu fee programs over permittee-responsible mitigation, because they usually involve consolidating mitigation projects where ecologically appropriate, pool financial planning and scientific expertise, reduce temporal losses of functions, reduce uncertainty over project

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		success, and is overseen by multiple agencies. As such, mitigation banks have more long-term oversight than a permittee-responsible project. However, the Water Boards' preference for mitigation banks over permittee-responsible mitigation is a soft preference because the permitting authority must determine the appropriate type of compensatory mitigation based on what would be environmentally preferable in a specific case. Depending on the particular project, on-site and in-kind permittee-responsible compensatory mitigation may be the most environmentally preferable option.
59.5	The authority or requirement of Regional Water Boards to evaluate and approve mitigation banks. Currently the agencies that approve establishment of mitigation banks, at least in the Bay Area, does not include the Regional Water Boards. If Regional Water Boards are required to permit the use of mitigation banks, they should certainly have a part in identifying standards for their approval and should have the authority to permitting individual banks and use thereof.	Currently, the Water Boards may, but are not required, participate in inter-agency review teams (IRTs) that evaluate and approve the establishment mitigation banks and in-lieu fee programs. Participation on the IRTs can help increase the likelihood that the mitigation banks and in-lieu fee programs are be available for future use. Regardless of whether the Water Boards participate on the IRTs, however, the Water Boards must evaluate whether purchasing of credits from a particular mitigation bank or in-lieu fee program is appropriate for any given project impacts. The standards for making that determination are set forth in subpart J of Appendix A.

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59.6	Location of Banks/Size of Service Areas: The Procedures provide that banks be located in the same watershed as the impact site. However, the size of the watershed and the size of the service area are poorly defined. Watersheds are defined as "a land area that drains to a common waterway, such as a stream, lake, ocean or ultimately to the ocean." This is a very broad range. The smallest unit, a headwater stream, is too small, whereas the San Francisco Estuary or San Francisco Bay, both of which could be described as watersheds, are too large. If the service area is defined as San Francisco Bay or even North San Francisco Bay, the mitigation could be 20, 50 even 100 miles from the site of loss.	Please note that the Procedures do ***not*** require that mitigation banks be located in the same watershed as the impact site. Section IV.B.5.d of the proposed Procedures state: “In general, the required compensatory mitigation should be located within the same watershed as the impact site, but the permitting authority may approve compensatory mitigation in a different watershed.” As the commenter observes, the size of watersheds vary from very small to very large. In some cases, it may be appropriate to focus on a smaller watershed, for instance where the impact is to a small stream discharging directly into the San Francisco Bay. In other cases, a broader look may be needed in order to locate appropriate compensation. When evaluating an appropriate watershed size for potential mitigation site locations, the chief criteria is a location where it is “most likely to replace lost functions and services…” (Appendix A, section 230.93(b)). The Procedures cannot possibly predict all possible situations and factors to consider, which is why the watershed definition is intentionally left flexible and the Procedures give the permitting authority sufficient flexibility in approving compensatory mitigation.
59.7	The Procedures state: "watershed approach should not be larger than is appropriate to ensure that the aquatic resources provided through the compensation activities will effectively compensate for adverse environmental impacts resulting from	The material cited in this comment is found in section • 230.93 (c)(4) of the Procedures, however section 230.93 (c)(4) only pertains to one of many elements required to be considered in the watershed approach to compensatory

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	activities authorized by the Orders." It is further stated that relevant environmental factors and local standards should be considered in when determining the appropriate watershed scale. These categories are broad and vague. What are the relevant environmental factors, how many local jurisdictions have standards and, if so, what are they? Local standards may be unfavorable to protecting wetlands. The loss of biological resources to the area of impact, habitat for its wildlife and flood control and other benefits for its people, should also be considered when evaluating whether to approve mitigation banks and the size of service areas.	mitigation (watershed scale). The preceding subsections of section 230.93 (c) *et seq*. also require consideration of many other factors, including but not limited to: evaluation of whether existing watershed plans are consistent with the Procedures; • consideration of the condition, landscape position and resource type of compensatory mitigation projects for the sustainability of aquatic resource functions within the watershed; • identification of functions and services that will likely need to be addressed at or near the areas impacted by the permitted impacts; • types of mitigation; • inventories of historic and existing aquatic resources, including identification of degraded aquatic resources, and identification of immediate and long-term aquatic resource needs within watersheds that can be met through mitigation; • identification and prioritization of resource needs; • a level of information and analysis needed to support a watershed approach commensurate with the scope and scale of the proposed impacts requiring an Order, as well as the functions lost a result of those impacts; and identification of the watershed scale.

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59.8	Although there is discussion of the consideration of biological resources in a watershed approach (page 29) the biological resources to be considered should also include the loss of habitat for local wildlife, and benefits for people, such as flood control, to the local area.	Section 230.93(c) of the State Supplemental Guidelines, which describes the watershed approach to compensatory mitigation, sets forth a number of factors to consider, which is not limited to biological resources and may include factors that the commenter identifies. The State Supplemental Guidelines notes that the watershed approach should provide, where practicable, the suite of functions typically provided by the affected aquatic resource. In addition, locational factors expressly state that consideration should be given to functions and services that will likely need to be addressed at or near the areas impacts by permitted impacts.
59.9	In lieu fees: We object to using in lieu fee programs unless the site for use of the fees is identified. Otherwise, there are risks that the funds may not be used for long periods of time, could no longer be sufficient to fund the needed mitigation, or could be used in an unacceptable location. A further concern is that with an in lieu fee programs there is no ability for the public to have input as decisions are made outside of a public process, after the wetland loss is approved. With mitigation that is identified at the time of the project approval there is public review. At minimum, there should be public noticing and review of the distribution of in lieu fee funds, if this component is ultimately approved.	The Procedures were not revised in response to this comment. In-lieu fee programs generally must have an instrument approved by the Corps prior to being used to provide compensatory mitigation. The federal regulations governing approval of in-lieu programs by the Corps are set forth in 40 CFR § 230.98. To address the potential problems with in-lieu fee programs identified by the commenter, the Corps added a number of requirements applicable to in-lieu fee programs in 2008, including that the prospectus identify the proposed service area. Section 230.98(d) sets forth the required public notice process for approval of the prospectus and instrument modification, which includes approval of in-lieu fee project sites (see section 230.98(g)). Note that this public participation process is a federal requirement, and therefore it is conducted by the Corps, not the Water Boards. The Water Boards

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		may participate in interagency review teams that help review establishment and management of in-lieu fee programs where appropriate. The Water Boards can also review the prospectus, annual reports, and other appropriate documents regarding an in-lieu fee program prior to determining whether the in-lieu fee program may serve as appropriate mitigation on a project-specific basis.
59.10	Mitigation Preference: The highest ranked criterion for mitigation should be on-site and in-kind as the preferred mitigation. Criterion #5 [Subpart J,§ 230.93.(b)] should be moved to #1. This would best assure the ecological benefits, particularly the wildlife habitat, are not lost to the local wildlife and human communities. Onsite and in-kind would certainly comply with a watershed approach. We would not think watershed interests would want to be moving natural wetlands around. The criterion should be reworded to recognize that it complies with a watershed approach and is not separate as is implied in the discussion on page 28.	The Procedures generally favor mitigation banks and in- lieu fee programs over permittee-responsible mitigation, because they usually involve consolidating mitigation projects where ecologically appropriate, pool financial planning and scientific expertise, reduce temporal losses of functions, reduce uncertainty over project success, and is overseen by multiple agencies. However, the Water Boards' preference for mitigation banks over permittee-responsible mitigation is a soft preference because the permitting authority must determine the appropriate type of compensatory mitigation based on what would be environmentally preferable in a specific case. Subpart J,§ 230.93(b) of the Procedures further state that "In general, the required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources (including the

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		availability of water rights), trends in land use, ecological benefits, and compatibility with adjacent land uses." Note that "on-site" mitigation is not always possible or preferable. Sometimes the impact location allows no space for on-site mitigation (such as in constrained flood control channels), or on-site mitigation would not provide much wildlife value (such as immediately adjacent to a major freeway). Sometimes, "in-kind" mitigation is also not the best option, such as when out- of-kind mitigation will offer comparatively better ecological benefits.
59.11	Authority of Permitting Authority: The permitting authority has latitude in requiring the quantity and location of wetlands and evaluating the watershed approach. We urge that wetland protections not be lower in some parts of the state. There should be a minimum standard that Regional Boards must follow, but each should have the authority to be stronger than the minimum to better ensure protection of the state's wetlands in their jurisdictional area.	Minimum requirements regarding compensatory mitigation are set forth in Section IV.B.5. See also general response #8.

Letter 60: Marshall, Pamela

Comment Number	Comment	Response
60.1	PLEASE protect California's wetlands.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 62: Mathias, Eileen

Comment Number	Comment	Response
62.1	Filling our wetlands for development is counter-productive, and will prove to be detrimental in the long run. We need our wetlands for replenishment of our aquifers. We need our wetlands for the fertile soils they produce. We need our wetlands for the abundance of flora and fauna they support, and consequently the healthy ecosystems and recreational interest they create. We need our wetlands to help control flooding, and loss of soils from uncontrolled runoff (yet another important role of wetlands). When wetlands are filled for development, they sometimes flood during heavy rains inland or during storm surges on ocean shorelines, as witnessed in the recent flooding of Houston. The cost of rebuilding Houston will be phenomenal. Had Houston planned better, using wetlands to help with flood control. It is a far more intelligent choice, based on science, to let wetlands remain.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 63: Metropolitan Water District of Southern California

Comment Number	Comment	Response
63.1	Metropolitan supports consistency and uniformity among regulatory agencies responsible for protecting water quality by regulating dredge and fill activities.	Comment noted.
63.2	However, there are distinct differences in these SWRCB procedures that may result in inconsistency with the Clean Water Act 404 program, especially compared to the 1987 Wetlands Manual and Supplements (hereinafter referred to as the 1987 Manual), including the associated Regional Supplement for the Arid West Region.	See general responses #4 and #10.
63.3	Additionally, some of the criteria in the procedures are undefined, and would be subject to interpretation and regulation on a "case by case basis," which may result in subjective and inconsistent regulation.	See general response #7.
63.4	The definition proposed by the SWRCB is not consistent with the Army Corps definition, as supplemented by the Regional Supplement for the Arid West Region and could lead to vastly different delineations of wetlands.	See general response #4.

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63.5	With regard to element (2) in the SWRCB definition, the clarifier of "sufficient to cause" can lead to various interpretations and does not provide the same quantifiable definition. The Army Corps definition states that hydric soils are in fact "present." Under the SWRCB definition, it could be interpreted that hydric soils are not present, but saturation is sufficient such that they "could be." This is undefined, immeasurable, and could be subject to argument.	The Procedures were not revised in response to this comment. The term “hydric substrate conditions” is defined in TAT Memo 4: “Hydric substrate conditions are conditions of upper substrate that form if saturation in the upper substrate, flooding, or ponding lasts long enough to create anaerobic conditions. For the purposes of this definition, the minimum duration of saturation, flooding, or ponding required to form anaerobic conditions in the upper substrate is identified as 14 consecutive days during the growing season. However, the minimum duration required to develop anaerobic conditions in the upper substrate is known to vary with soil temperature, soil pH, and other environmental factors, and scientific evidence indicates that in some California environments the chemical transformation to anaerobic conditions in the upper substrate may occur in fewer than 14 days. Regional indicators of hydric conditions pertinent to California are provided in regional supplements to the USACE manual for wetland delineation, including at this time the “Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)” (USACE 2008a), and the “Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual:

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		Western Mountains, Valleys, and Coast Region" (USACE 2008b).
63.6	With regard to element (3) in the SWRCB definition, the allowance for areas that lack vegetation will lead to a broad interpretation of wetlands beyond the Army Corps definition.	See general response #4.
63.7	Metropolitan is concerned that this definition could lead to regulatory overreach and disrupt a project where, for example, a rain storm results in a temporary puddle that causes the site to meet the broad and undefined state definition of wetland.	Use of the proposed wetland definition would not present a significant departure from the practice of wetland identification or delineation in California, and it is highly unlikely that a puddle resulting from a rain event would result in a feature meeting the technical definition of a wetland. In addition, the Procedures provide a wetland jurisdictional framework which sets forth criteria for determining whether features that meet the wetland definition are a water of the state. This strategy is proposed in an attempt to prevent the Water Boards from being overly inclusive when making determinations on jurisdiction while protecting features that provide wetland functions, beneficial uses, or ecological services.
63.8	The SWRCB definition will lead to substantial additional regulatory burden for project proponents and could result in unexpected project delay if a wetland becomes present after a rain event.	As explained in Section 1 "Economic Considerations" of the Staff Report, the Procedures are not expected to add additional regulatory burdens and costs. Instead, the Procedures will streamline and clarify section 401 permitting in California, and thereby reduce overall costs of section 401 permitting.

Comment Number	Comment	Response
		Also note that the Procedures' define wetlands using a three parameter definition, incorporating hydrology, wetland soils, and wetland vegetation. Hydrology alone does not define a wetland nor would a single rain event be sufficient hydrology, by itself, to sustain a wetland. See also general response #4.
63.9	If the SWRCB desires to have consistency with the 404 program, Metropolitan recommends adopting the same definition of wetland provided in the 1987 Manual.	See general response #4.
63.10	If the SWRCB wishes to regulate wetlands that are "left out" of the Corps 404 program due to Supreme Court decisions, then it may be possible to clarify that certain types of intrastate wetlands are included in the state procedures without adding in new definitions, procedures and requirements.	The Procedures were not revised in response to this comment. The discharge of dredged or fill material to non-federal wetlands is already regulated by waste discharge requirements. For example, State Water Board Order 2004-0004-DWQ, sets forth general waste discharge requirements for dredged or fill discharges to certain waters deemed by the Army Corps to be outside of federal jurisdiction. Applying separate permitting rules and wetland definitions for federal and non-federal waters and wetlands would add undue complexity and needless cost to the Water Boards' dredge and fill program, and could result in higher permitting fees. In addition, applicants would be faced with a more complex permitting and wetland delineation process, adding time to project schedules, thereby increasing project costs.
63.11	In Section 4(d) (pg. 2), the definition of covered wetlands excludes categories of artificial wetlands that are maintained for defined purposes unless they also satisfy criteria listed in Section 4(c),	See general response #2.

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	including: Resulted from historic human activity and has become a relatively permanent part of the natural landscape This criteria is very ambiguous. The terms "historic" and "relatively permanent" are not clearly defined nor measurable. Without a clear definition or explanation as to how the various criteria interact, Metropolitan is concerned that any of the examples of artificial wetlands could be easily interpreted by the SWRCB to be (regulated) waters of the state. Metropolitan recommends deleting this criteria in section 4(c).	

Comment Number	Comment	Response
63.12	Metropolitan recommends adding to the list of specifically excluded artificial wetlands: All ponds, lagoons, and other basins, and any lined and/or covered reservoirs created for, and appurtenant to, the storage, treatment, and distribution of municipal water supplies.	See general response #2. In addition, section II of the Procedures has been revised to state that all artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in 2, 3.a, 3.b, or 3.c are not waters of the state.
63.13	The Fact Sheet acknowledges this inconsistency that "the Water Boards definition does not require the occurrence of vegetation to call an aquatic resource a wetland." This conflicts with the long-established delineation procedures provided in the 1987 Manual and regional supplements. The difference in criteria can lead to vastly different delineations of wetlands.	The proposed delineation methods do not require a different methodology for the vegetation criterion, except in cases where vegetation is absent. In this case, section III of the Procedures clarifies that “[t]he methods shall be modified only to allow for the fact that the lack of vegetation does not preclude the determination of such an area that meets the definition of wetland.”

Comment Number	Comment	Response
63.14	Metropolitan recommends the procedures maintain consistency with delineation procedures provided in the Corps 1987 Manual and supplements. Metropolitan recommends utilizing the Army Corps definition of wetland for consistency in delineating both federal and state wetlands.	See general response #4.
63.15	The Procedures state that "applicant must submit the items listed in subsection 1 to the permitting authority. In addition, applicants shall consult with the permitting authority about the items listed in subsection 2. Within 30 days of receiving the items listed in subsection 1, the permitting authority may require the applicant to submit one or more of the items in subsection 2 for a complete application. Within 30 days of receiving all of the required items, the permitting authority shall determine whether the application is complete and notify the applicant accordingly" (pg. 4). The inclusion of this additional documentation on a case-by-case basis creates a potentially lengthy application process that would last longer than the combined 60 days, by allowing the permitting authority to arbitrarily decide that an item from Subsection 2 is also necessary. There are no listed criteria to support when the permitting authority may require additional items from subsection 2 to determine an application is complete. The purpose of the State Permit Streamlining Act of 1977 (Govt Code § 65920 et seq), is to expedite the processing of permits for projects by imposing time limits. These procedures will interfere with this.	The Procedures have not been revised in response to this comment. State regulatory timeframes pertaining to the issuance of 401 certifications are established by the California Permit Streamlining Act (PSA), California Government Code § 65920 et seq., which was enacted in 1977. The Procedures do not introduce any new requirements that would conflict with the PSA, or add elements that would extend certification timeframes. Section 65943 (a) of the PSA provides that the Water Board has 30 days in which to determine whether an application is complete, and section 65943(b) provides an additional 30 calendar days after receipt of supplemental information. The Procedures are consistent with these requirements in that they specify that applications be reviewed for completeness within 30 days of receipt and deemed complete within 30 days of receiving all of the required items. Applicants are welcome to submit items from section IV.A.2 with their initial application to avoid waiting the additional 30-day period for Water Board staff to list items needed on a case-by-case basis. It should be highlighted that complete application requirements, listed in section IV.A.2 are requested during the Water Board's existing

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63.16	Metropolitan recommends the SWRCB determine which specific items constitute a complete application subject to review under CA Govt Code§ 65920 et seq.	The Procedures are consistent with the requirements of the Permit Streamlining Act (CA Govt. Code § 65920 et seq.). With regards to the list of items required for a complete application, the Permit Streamlining Act requires that "each state agency … shall compile *one or more lists* that shall specify in detail the information that will be required from any applicant for a development project (Gov. Code, § 65940 (a) – emphasis added). CCR title 23 section 3835 lists items needed for a complete water quality certification application; however, as noted in the Staff Report, section 6.6, current application requirements do not include all necessary information to make a regulatory decision, leading to delays in application processing. To address this, the Procedures list additional items needed for a complete application. The additional items reflect information that applies to some but not all projects (e.g. supplemental field data from the wet season). The Board could require that this additional information be required in all cases, but that could constitute unnecessary workload for many projects.

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63.17	the Board should reconsider allowing for a case-by-case requirement of the following items, which could lead to further uncertainty and delay.	See general response #7.
63.18	The Procedures require the applicant provide the "dates upon which the overall project activity will begin and end; and, if known, the date(s) upon which the discharge(s) will take place" (pg. 4). It is often difficult to know the exact day when a project will begin and end, due to pre-project permitting uncertainty, schedule conflicts, and other factors, and it would be helpful to have some flexibility in this requirement and a recognition that these dates will often be approximations. Metropolitan recommends modifying this requirement to state "estimated dates upon which the project activity will begin and end ... "	The Procedures have not been revised in response to this comment. The requirement in the Procedures to provide the beginning and end dates for the *overall project activity* could include activities such as applying for permits or preparing pre-project permitting materials. Additionally, the requirement for providing the date(s) upon which the discharge(s) will take place states that these dates are to be provided “if known.” Therefore, this requirement provides enough flexibility.
63.19	The Procedures state that the "permitting authority may require that the map(s) be submitted in electronic format (e.g., GIS shapefiles)" (pg. 4). Maps can be provided as (static) figures in a variety of electronic formats (e.g. in .jpeg or .pdf format). A shapefile is "an Esri vector data storage format for storing the location, shape, and attributes of geographic features" (ESRI 2017). It is unclear whether SWRCB wants to have static map figures for their records, or shapefiles to be used for additional (spatial) analysis	The sentence quoted in the comment already indicates that a GIS shapefile may be required. Due to the wide variety of project types and scales, in some cases it may be appropriate to accept maps in a format other than a GIS shapefile. Accordingly, the Procedures were not revised to re quire a specific digital file type in all cases.

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	within GIS applications. In order to promote consistency statewide Metropolitan recommends the Procedures state specific digital file type(s) to be submitted under this program.	
63.20	The procedures state "To the extent that the permitting authority is acting as the lead agency under CEQA, it may be necessary for the permitting authority to conduct further analysis to comply with CEQA" (footnote pg. 5). This highlights an inherent conflict between these procedures and the federal requirements and CEQA. Under CEQA, an alternatives analysis is only required when preparing an Environmental Impact Report (Guidelines CCR§ 15126.6) It is unclear how the SWRCB proposes to reconcile these application requirements with CEQA. It is imperative that the SWRCB and permitting authority participate in the CEQA public review process, especially as required under CCR § 15096(b), in order to ensure adequate information is included in the CEQA document for the purposes of issuing a state permit.	The alternatives analysis for determining the LEDPA is distinct from the alternatives analysis required under CEQA. An alternatives analysis required for the purposes of CEQA covers a much broader set of environmental impacts, including aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public health and vector control, public services, recreation, transportation and traffic, utilities, and service systems. The footnote the commenter cites references the fact that the Water Boards may need to analyze broader environmental impacts if they are lead agency under CEQA. In addition, since an alternatives analysis required under CEQA covers a much broader set of environmental impacts than impacts to water resources, they do not always include alternatives designed specifically to avoid or minimize impacts to waters; rather, the alternatives assessed are often larger-scale project alternatives. However, the CEQA alternatives analysis may be sufficient to fulfill the alternatives analysis requirements set forth in the Procedures if that analysis demonstrates that the impacts to waters of the state have been avoided and minimized to the extent practicable.

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		Finally, Title 14. CCR section 15096 (b) states, “A responsible agency shall respond to consultation by the lead agency in order to assist the lead agency in preparing adequate environmental documents for the project.” The Procedures also encourage applicants to consult with the Water Boards when preparing applications for discharges of dredged or fill material.
63.21	One of the exemptions from the alternatives analysis requirement would be if the project is "conducted in accordance with a watershed plan that has been approved by the permitting authority ... " (pg. 5). It is unclear what type(s) of watershed plan would meet this requirement. The procedures need to include more information on the type of watershed plan and specific content requirements that would suffice.	A watershed plan, for the Purposes of the Procedures, is defined in section V as “a document or a set of documents, that is developed in consultation with relevant stakeholders, a specific goal of which is aquatic resource restoration, establishment, enhancement, and preservation within a watershed. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans should include information about implementing the watershed plan. Watershed plans may also identify priority sites for aquatic resource restoration and

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		protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans. The permitting authority may approve the use of other plans, including for example, Habitat Conservation Plans (HCPs) Natural Community Conservation Plans (NCCPs), or municipal stormwater permit watershed management programs as watershed plans, if they substantially meet the stated above. Any NCCP approved by the California Department of Fish and Wildlife before December 31, 2020, and any regional HCP approved by the United States Fish and Wildlife Service before December 31, 2020, which includes biological goals for aquatic resources, shall be used by the permitting authority as a watershed plan for such aquatic resources, unless the permitting authority determines in writing that the HCP or NCCP does not substantially meet the definition of a watershed plan for such aquatic resources.”
63.22	The procedures state that: "If required by the permitting authority on a case-by-case basis, if the wetland area delineations were conducted in the dry season, supplemental field data from the wet season to substantiate dry season delineations" (pg. 6). This is inconsistent with the 1987 Manual, which contains procedures for delineating wetlands, including measurable indicators, that apply at any time of the year. The 1987 Manual does not contain any seasonal restrictions and notes that	See general response #7.

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	the combination of indicators (wetland hydrology, hydric soils, wetland vegetation) are adequate to classify a wetland at any time of the year.	
63.23	the Procedures could create significant delay if a project proponent has to schedule delineations for a specific time of year.	See general response #7.
63.24	Metropolitan recommends adopting a definition, with indicators, consistent with the Army Corps 1987 Manual that would allow for a consistent process to delineate wetlands at any time of year. A desire for supplemental wet season data should not unnecessarily delay the processing of an application.	See general response #4.
63.25	Additionally, Metropolitan recommends the procedures allow for the Army Corps jurisdictional delineation to be acceptable information for a complete application.	The Procedures were also revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2), including reports verified per RGL 16-01.
63.26	The Procedures state "If required by the permitting authority on a case-by-case basis, an assessment of the potential impacts associated with climate change related to the proposed project and any proposed compensatory mitigation, and any measures to avoid or minimize those potential impacts" (pg. 6). This requirement is not clearly defined, and there is a risk that this could create unnecessary duplication and inconsistencies with other	See general response #9.

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	regulatory processes. The SWRCB did not provide any guidance or methodology on how an applicant should assess "potential impacts associated with climate change related to the proposed project and ... compensatory mitigation." The fact that this could be required on case-by-case basis leaves room for too much subjectivity and inconsistency among permitting staff, which was supposed to be avoided with implementation of consistent procedures. This is inconsistent with the desire to "Strengthen regulatory effectiveness and improve consistency across all Water Boards."	
63.27	Metropolitan requests that the SWRCB defer to other regulatory processes that ensure that impacts associated with climate change will be considered and mitigated.	See general response #7.
63.28	The Procedures state "If compensatory mitigation is required by the permitting authority on a case-by-case basis, an assessment of the overall condition of aquatic resources proposed to receive a discharge of dredged or fill material and their likely stressors, using an assessment method approved by the permitting authority .. . " (pg. 6). This is another example of undefined and inconsistent requirements within the Procedures. The Procedures do	Page 69 of the Staff Report provides the following information about assessment methods: “When a project includes unavoidable impacts to waters requiring mitigation, the Procedures require an assessment of the overall condition of those waters using an assessment method approved by the Water Boards. CRAM [California Rapid Assessment Method] is one such assessment method that is likely appropriate for assessing overall condition because it has been peer reviewed and has been used to assess various wetland types common to California. CRAM has

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	not include examples of assessment methods that may be acceptable. This could lead to different methodologies being accepted among the various regional boards. This is inconsistent with the stated desire to "Strengthen regulatory effectiveness and improve consistency across all Water Boards."	been proven to be cost effective and scientifically defensible when used for monitoring ecological conditions and assessing the performance of compensatory mitigation projects, and is widely used in California for these purposes. CRAM is a component of the Wetland and Riparian Area Monitoring Plan (WRAMP) endorsed by the California Water Quality Monitoring Council. CRAM is a Level 2 assessment method within the U.S. EPA's 3 Level framework for wetland monitoring where Level 1 includes mapping information and Level 3 consists of intensive quantitative data collected to validate Level 1 and Level 2 assessments. In approving assessment methods, the Water Boards will cooperate in achieving goals of the California Water Quality Monitoring Council (Monitoring Council) in the collection and reporting of water quality data and information pursuant to Water Code section 13181. This includes implementing guidance, methods, and plans endorsed or directed by the Monitoring Council for monitoring and assessment of aquatic resources." Because other types of assessment methods – for instance Level 3 assessments - could possibly be more appropriate for a selected site or type of habitat than CRAM, the Procedures allow the use of another method, approved by the permitting authority.

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63.29	Metropolitan requests that the State Water Board reference a standard, consistent, and reliable method for assessing the conditions of aquatic resources and their likely stressors.	See the response to comment #63.28.
63.30	The Procedures state "The permitting authority has the discretion to approve a project only if the applicant has demonstrated the following: A sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts to waters of the state; The potential impacts will not contribute to a net loss of the overall abundance, diversity, and condition of aquatic resources in a watershed ... " (pg. 8). The State Water Board originally stated that the one of the main purposes of the Procedures was to comply with executive order W-59-93 "to ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values ... " Executive Order W-59-93 explicitly applies to wetlands, however it appears the SWRCB is now applying the "no net loss" policy to all waters of the state, not just wetlands. This creates the potential that a project proponent would not be allowed to impact any waters of the state without providing compensatory mitigation. More significantly, this in turn, could pre-determines that any activity with any impact to a waters of the state could not be exempt from CEQA if it required compensatory mitigation, even for .001 acre of impact.	The State Water Board developed the Procedures for a number of purposes, one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material to waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. The Porter-Cologne Water Quality Control Act defines waters of the state broadly. “’Waters of the state’ means any surface water or groundwater, including saline waters, within the boundaries of the state.” (Water Code, § 13050(e).) The definition includes aquatic resources that meet the technical wetland definition; however, it also includes other waters of the state that are not defined (see general response #11). These Procedures do not result in an expansion of the Water Boards’ regulatory authority beyond waters of the state that have historically been regulated.

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		Lastly, compensatory mitigation requirements are determined on a project-by-project basis and are based the applicant's ability to demonstrate that they have taken a sequence of actions to first avoid, then to minimize, and lastly compensate for adverse impacts to waters of the state. Compensatory mitigation ensures that there is no net loss to California's aquatic resources and that the beneficial uses of water resources now present are maintained for future generations.
63.31	Metropolitan recommends the SWRCB establish thresholds of significance for impacts to waters of the state, such that minor alterations to land, maintenance of existing facilities, and repair and replacement of existing facilities could still be exempt from CEQA if they impacted minor amounts of waters of the state. The thresholds could be similar to acreage criteria within the Army Corps Nationwide Permitting program.	The Procedures have not been revised in response to this comment. For the NWP program, the Corps makes the determination that the classes of authorized activities comply with the CWA section 404(b)(1) Guidelines and have only minimal adverse effects individually and cumulatively. This determination is based on federal statutes and applicable federal regulations and policies. For this reason, the Water Boards must make an independent determination based on its own authorities as to the significance of the environmental effects, individually and cumulatively, on state waters. A project qualifying for a NWP may not be minimally impacting environmentally on state waters based on CEQA and other applicable California statutes, policies and regulations.

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		Accordingly, establishing thresholds of significance related to the CEQA exemption status of a project is not appropriate.
63.32	Metropolitan further recommends the Procedures align with the Nationwide Permitting program, which could allow for minimal individual and cumulative adverse environmental effects to waters of the state for specified projects and activities.	For the NWP program, the Corps makes the determination that the classes of authorized activities comply with the CWA section 404(b)(1) Guidelines and have only minimal adverse effects individually and cumulatively. This determination is based on federal statutes and applicable federal regulations and policies. For this reason, the Water Boards must make an independent determination based on its own authorities as to the significance of the environmental effects, individually and cumulatively, on state waters. A project qualifying for a NWP may not be minimally impacting environmentally on state waters based on CEQA and other applicable California statutes, policies and regulations. The Water Boards certify a subset of Corps' NWPs that are exempt from review under the CEQA through a general order. Other NWPs are certified through an individual 401 Water Quality Certification in part because of the need to conduct a CEQA analysis.

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63.33	The procedures state "If an alternatives analysis is not required by the Corps for waters of the U.S. impacted by the discharge of dredged or fill material, the permitting authority shall require an alternatives analysis for the entire project in accordance with the State Supplemental Dredge or Fill Guidelines, unless the project is exempt under Section IV.A.1.(g) above" (pg.8). Alternatives analyses under these procedures would be based on different categories, or "tiers," of projects. This is inconsistent with the Army Corps 404 program requirements for an alternatives analysis and would not be consistent with the federal Clean Water Act section 404 program. This creates an entirely new and potentially duplicative alternatives analysis requirement and could cause permittees to prepare an alternatives analysis for Army Corps jurisdictional waters in accordance with a (different) SWRCB procedure.	See general response #1.
63.34	Metropolitan recommends that the procedures align with the alternative analysis requirements of the Army Corps 404 program for consistency and reliability.	See general response #1.

Letter 64: Midpeninsula Regional Open Space District Board of Directors

Comment Number	Comment	Response
64.1	On behalf of the Board of Directors of the Midpeninsula Regional Open Space District (Midpen), I am writing to express our support for the proposed statewide wetlands policy regulation ("Procedures for Discharges of Dredged or Fill Materials to Waters of the State"), and ask you and the other Board Members to do the same.	The commenter's support for the Procedures is noted.
64.2	The State Water Resources Control Board stands in a unique position to lead in the face of federal retreat. We urge you to use your authority to adopt the statewide wetlands policy.	The commenter's request for adoption is noted.

Letter 65: NextEra

Comment Number	Comment	Comment Response
65.1	While NextEra is supportive of the State's efforts to protect wetlands, these efforts should be harmonized with the State's renewable energy goals. Accordingly, the Procedures should be crafted to avoid onerous and duplicative regulatory processes that increase burdens on the development of renewable energy projects.	See general response #10 and response to comment #65.3 (below).

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65.2	NextEra continues to have concerns with the jurisdictional scope of the draft Procedures, which have significant overlap with the federal Section 404 permitting program under the Clean Water Act and the California Department of Fish and Wildlife's (CDFW's) lake and streambed alteration (LSAA) program under Fish & Game Code section 1600 et seq. Notably, CDFW's LSAA program already regulates most (if not all) of the very same WOTS that the SWRCB's proposed Procedures are intended to regulate. CDFW's program not only applies to all lakes, rivers and streams in the state, but also has been extended to episodic rivers and streams, ephemeral stream, desert washes, watercourses with subsurface flow, and even floodplains. Many of the WOTS sought to be regulated under the draft Procedures fall under this broad scope of CDFW jurisdiction. The draft Procedures would create a regulatory program that in large part duplicates CDFW's LS.AA program resulting in undue burdens on a wide array of	Comment noted. See general response #10. In addition, the Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The Procedures are intended to clarify for applicants what is required for a complete application and the criteria for permit approval, bringing consistency across the Water Boards.

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	industries and potentially duplicative mitigation. In addition, the introduction of another duplicative permitting process creates yet another opportunity for certain organizations to delay/derail an environmentally sound renewable energy project via administrative appeals and litigation. Furthermore, the draft Procedures and responses to comments do not explain or quantify which WOTS the SWRCB believes are not adequately protected under the LSAA program.	
65.3	At a time when the State is setting increasingly aggressive renewable energy goals, the State should be seeking ways to simplify/streamline permitting processes for renewable energy projects, not adding a largely duplicative layer of regulation with arguably negligible environmental benefits. While NextEra fully appreciates the State's goals relating to its "no net loss" policy, the State's goals can be best served through a programmatic approach to protection of WOTS that promotes coordination between various federal and state regulatory agencies. Elimination of duplicative and overlapping regulatory processes and requirements is one key aspect of this. Accordingly, to avoid unnecessary regulatory program duplication and the associated cost/schedule impacts on renewable energy development in CA, Section IV.D of the Procedures should exclude any discharge to WOTS that is also subject to regulation under CDFW's LSAA program.	As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal thereby reducing the number of information requests and expediting the application review process. In addition, several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetland acreages and values. As to agency coordination, the Water Boards are committed to increasing interagency coordination in order to streamline application review for all parties involved and expect to try and reach agreements with other agencies that facilitate coordination.

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		Also see general response #10. The Procedures have not been revised in response to this comment. See general response #10.
65.4	Additionally, NextEra supports the exclusions identified in the current draft Procedures for artificial wetlands which would not qualify as WOTS, as well as the proposal for exemptions from the alternative analysis requirements for projects which meet the terms and conditions of one or more of the Water Board certified Corps' General Permits. Such specific exclusions and exemptions provide reasonable alternatives for avoidance and minimization measures which allow for certainty in constructing renewable energy projects.	Comment noted.
65.5	The Regional Water Quality Control Boards (RWQCBs), under the oversight of the State Board, should work with the CDFW and the Army Corps of Engineers' (Corps) California District Offices to create a joint application procedures for dredge or fill activities.	Comment noted. While a joint application may be useful, this request is outside the scope of the Procedures.
65.6	The RWQCBs should also work with the CDFW and the Corps' California District Offices to create a uniform mitigation assessment methodology which would provide for the equivocal assessment of ecological and hydrological function for impacts to waters.	Staff at the State Water Board participates in the California Wetland Monitoring Workgroup (CWMW) whose mission is to improve the monitoring and assessment of wetland and riparian resources by developing a comprehensive stream, wetland, and riparian area monitoring plan for California and through increasing coordination and cooperation among local, state, and federal agencies, tribes, and non- governmental organizations. The Corps

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		and CDFW also participate in the CWMW in the development of uniform assessment methods that may be used to monitor compensatory mitigation.
65.7	Either all NWPs or specific NWPs certified under the Section 401 program and Regional General Permits (RGP) specific to the California Corps' District Offices should be certified by the SWRCB in a parallel process with revisions of the Procedures. In the event the SWRCB chooses to not certify the NWP program in its entirety, but would rather review each individual General Permit for certification, we have identified the most crucial permits in the construction of renewable energy projects that we urge the SWRCB to certify (if not certified already) in conjunction with adopting revised Procedures: NWP 12 - Utility Line Activities; NWP 14-Linear Transportation Projects; NWP 43 - Stormwater Management Facilities; and NWP 51 - Land Based Renewable Energy Facilities.	The State Water Board has historically certified a limited number of nationwide permits that qualified as CEQA exempt. For non-CEQA exempt projects, the State Water Board would need to conduct a full CEQA review to certify nationwide permits. However, there are currently insufficient resources to complete a full CEQA review in a limited amount of time (for all classes of activities covered under approximately 50 nationwide permits for impacts in all areas of California. For a list of pre-certified nationwide permits please refer to the State Water Board's General Order on the Water Boards website: http://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.shtml. For Corps' general permits that are not nationwide permits, the commenter should contact the appropriate regional water quality control board (or the State Water Board if the permit area falls within the jurisdiction of more than one regional water quality control board) to request coordination for the certification of Corps general permits. Coordination would include the proper compliance with the CEQA.

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65.8	It is understood that it is the intent of the SWRCB to protect wetlands that are no longer subject to federal jurisdiction due to the multiple U.S. Supreme Court decisions and the uncertainty created by those decisions. However, the currently proposed draft definition claims all "Waters of the U.S." to also be WOTS. This definition, as currently set forth, exceeds the initial intent of the SWRCB, and would create an unnecessary jurisdictional overlap. If the SWRCB intends to regulate federal jurisdictional waters as WOTS, then the State should seek delegation of the Section 404 Program to reduce overlapping and potential contradictory jurisdictions and permitting processes.	The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredged or fill material into waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. The State Water Board is not seeking approval to administer the section 404 program at this time. The Army Corps will remain responsible for issuing section 404 permits. Should the State Water Board seek approval to administer the section 404 program in the future, it would follow the procedures for assumption outlined in section 404. Also see general response #10.

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65.9	If the SWRCB does not exclude discharges to WOTS that are already governed by CDFW's LSAA program, or does not adopt agency coordination/streamlining measures that effectively achieve the same result, then at the very least, the Procedures should apply to "wetlands" only and not to non-wetland WOTS. The SWRCB's proposed definition of "wetland" already covers the very wetlands that the SWRCB is concerned do not get adequate protection under the federal Section 404 program - e.g., "isolated" wetlands. Furthermore, as discussed above, CDFW's LSAA program already govern discharges to non-wetland WOTS.	See general responses #9 and #10.
65.10	NextEra is concerned that the SWRCB staff have not thought through the potential consequences associated with expanding the reach of the Procedures beyond the SWRCB's original focus on wetlands. In particular, we are concerned that if the Procedures are applied to non- wetland WOTS, it could have the unintended consequence of effectively taking thousands of acres of land off the table for renewable energy development that would otherwise be allowed under current law as long as impacts to those non-wetland WOTS are properly mitigated. This is because, under the draft Procedures, an alternatives analysis requiring the "least environmentally damaging practicable alternative" (LEDPA) would apply to almost every non-wetland dry wash/rivulet in the state regardless of size.	The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. The Porter-Cologne Water Quality Control Act defines waters of the state broadly. "'Waters of the state' means any surface water or groundwater, including saline waters,

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		within the boundaries of the state." (Water Code, § 13050(e).) The definition includes aquatic resources that meet the technical wetland definition; however, it also includes other waters of the state that are not defined (see general response # 11). These Procedures do not result in an expansion of the Water Boards' regulatory authority beyond waters of the state that have historically been regulated.

Letter 66: Norris, Richard

Comment Number	Comment	Response
66.1	We urge you to adopt strong protections for our wetlands. As you're aware, the federal government is planning to rescind the Clean Water Rule, and let more wetlands across the country be destroyed. This is unacceptable for California. The Water Board needs to intervene and adopt a strong rule for wetlands as soon as possible.	The commenter's request for adoption is noted.

Letter 67: Nuripour, Schani

Comment Number	Comment	Response
67.1	Please save our wetlands. Please adopt the strongest possible policy to preserve California's last remaining wetlands!	The commenter's request for adoption is noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 68: O'Brien, Matthew

Comment Number	Comment	Response
68.1	Action is needed now to establish the most stringent possible regulations regarding the harm or destruction of California wetlands.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Letter 70: San Joaquin Tributaries

Comment Number	Comment	Response
70.1	The SJTA is concerned with the Board's legal authority to require new dredge and fill material procedures.	See general response #9.
70.2	The SJTA is also concerned with the redundant and conflicting requirements caused by the excessive scope of the proposed procedures.	The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. See general response #10.
70.3	The Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.) provides the State Water Board with the legal authority to regulate the discharge of waste that may affect quality of waters of the State. However, the State Water Board has no authority to amend the requirements of section 404 of the Clean Water Act. Despite the lack of authority, the State Water Board is proposing to	The State Water Board is not proposing to amend the Clean Water Act. It is within the State Water Board's authority to regulate waters of the state that are also subject to federal regulation. Pursuant to the Clean Water Act, section 401(d), the Water Boards' water quality certifications should set forth limitations necessary to assure compliance with various provisions of the Clean

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	do just that – add requirements to the section 404 permit process.	Water Act "and with any other appropriate requirement of State law set forth in the certification." The Procedures will be included in a state policy for water quality control, the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. As part of a water quality control plan, the Procedures will have the same force and effect as a regulation.
70.4	The State Water Board has only such powers as conferred on them, expressly or by implication, by the California Constitution or Legislature. (Friends of the Kings River v. County of Fresno (2014) 232 Cal.App.4th 105, 117; see also Security National Guaranty, Inc. v. California Coastal Com. (2008) 159 Cal.App.4th 402, 419 ["because an agency has been granted some authority to act within a given area does not mean it enjoys plenary authority to act in that area."].) The Porter- Cologne Act does not authorize the State to regulate dredge and fill operations.	See general response #9.
70.5	The State Water Board does not have an approved permit program for dredge and fill material. For this reason, the provisions of section 13376 are not applicable and the State Water Board lacks the authority to regulate dredge and fill material, either through the section 404 process or the Water Code section 13260 process.	See general response #9.

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70.6	The State Water Board's use of Water Code section 13260 et seq. for the legal authority to implement the proposed procedures is not authorized nor envisioned by the California Legislature. The Legislature's intent is apparent: unless the State desires to administer its own USEPA approved State permit program for the discharge of dredged or fill material, CWA 404 and the regulations adopted by the Corps occupy the field and preempt the proposed procedures.	See general response #9.
70.7	The procedures treat both water quality certifications issued by the Water Boards pursuant to CWA section 401 and WDRs issued under state law as permits for the discharge of dredged or fill material that are subject to the procedures. The use of the State Water Board's authority to adopt or approve discharge prohibitions, prohibiting the discharge of waste in certain areas or under certain conditions (Water Code § 13243), to include authority to prohibit discharges of dredged or fill material circumvents the procedures adopted by the Legislature and is regulatory overreach by the State Water Board.	See general response #9.

Comment Number	Comment	Response
70.8	The proposed procedures include the addition of an alternative analysis which requires an applicant to evaluate alternative locations, designs and/or configurations for a proposed project. (See Procedures § IV[B][3].) The existing federal process requires the development of an alternative analysis and the least environmentally damaging project alternative ("LEDPA"). As drafted, the proposed procedures allow Water Board Staff to require an alternatives analysis when one is not required by the Corps and allows Water Board Staff to second guess the Corps' LEDPA determination. Although the procedures include an exception where the Water Boards have already granted certification of a general permit, this exception is of limited value as it can be overridden if desired.	See general response #1.
70.9	By requiring adoption of a new LEDPA, after a previous LEDPA was approved by the Corps, or by requiring additional alternatives analysis that may revise the project, the proposed procedures are likely to result in conflict with existing procedures. As such, by not providing deference to the Corps' determinations or exemptions for alternative analysis, the State Water Board is adding duplicity and increasing the likelihood of conflict.	See general response #1.

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70.10	The proposed procedures exempt certain areas and activities from the application procedures in order to better align the Water Board's dredged or fill material program with the CWA section 404. The language of the exemptions is uncertain. "These exclusions do not, however, affect the Water Board's authority to issue or waive waste discharge requirements (WDRs) or take other actions for the following activities or areas to the extent authorized by the Water Code." (See Procedures § IV[D].) This language erodes the exemptions and it is no longer clear whether the exemptions apply. Additionally, this language, appears to provide each Water Board the discretion to determine that an activity listed by the procedures as exempt shall, instead, be subject to permitting and regulation, effectively eliminating the exemptions on a case-by-case basis.	Section IV.D of the Procedures identifies areas and activities that are exempt from complying with the application procedures specified in section IV.A and IV.B. These areas and activities are not exempt as waters of the state and could be regulated under another program. Clean Water Act section 402 suction dredge mining activities would be regulated under the National Pollutant Elimination System (NPDES) program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt from the application requirements of the Procedures.
70.11	Moreover, as drafted, the exemptions create inconsistencies with the well-established federal exemptions. Specifically, the prior converted cropland exclusion and the definition of abandonment do not reflect current law. First, as currently used by the Corps, the prior converted cropland exclusion is applicable to land that changes to non-agricultural use. (See New Hope Power Co. v. U.S. Army Corps of Engineers (2010) 746 F.Supp.2d 1272.)	See general response #3.

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70.12	Second, the proposed procedures state that the prior converted cropland exclusion is lost if the land has not been "planted" to an agricultural commodity for more than five consecutive years (i.e. abandoned). This is a significantly narrower definition than the Corps' guidance documents provide concerning abandonment. The Corps considers management and maintenance activities related to agricultural production to be proper uses that stave off abandonment, rather than just planting.	See general response #3.
70.13	The State Water Board identified as one of its key goals for the procedures, "…ensuring consistent regulation across the regions." However, due to the inconsistencies noted above, the proposed procedures fail to provide dischargers with adequate notice of what conduct is prohibited and may trigger enforcement action. Thus, the proposed procedures are impermissibly vague. Due process protections proscribe the enforcement of vague regulations. (Cranston v. City of Richmond (1985) 40 Cal.3d 755.) Due process precludes enforcement of a regulation based upon impermissible vagueness when the regulated party "could not reasonably understand that [their] contemplated conduct is proscribed." (Id. at p. 764.) The inconsistencies created by the draft language make the exemptions so vague the regulated community would not be able to understand whether their conduct is proscribed or authorized.	See response to comments #70.1 through #70.12 on how the perceived inconsistencies have been addressed.

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70.14	The SJTA is concerned by the State Water Board's increasingly zealous focus on regulatory expansionism. The State Water Board's recent actions test the limits of its legal authority (e.g. the Bay-Delta WQCP, the mercury provisions, and these proposed procedures), and are particularly troubling in light of the minimal outreach and stakeholder involvement that has preceded publication of draft procedures.	As described in the Staff Report, Section 4: Introduction, State Water Board staff has conducted extensive stakeholder outreach since 2008, and has held numerous workshops to discuss the Procedures. This section has been revised to reflect the staff workshops and Board hearing held in 2017. See also general response #9.
70.15	Moreover, the cost of the State Water Board's regulatory expansionism increases the strain on the limited resources needed to process applications by the already understaffed Water Boards.	See general response #6.
70.16	The SJTA is also concerned about the lack of benefit derived from the increased regulatory environment. Here, it makes little sense to create a new sweeping regulatory program for one percent of discharges – particularly when the Water Boards already regulate these discharges, when necessary through WDRs.	The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The Procedures are intended to clarify for applicants what is required for a complete application and the criteria for permit approval, which will be consistent across the Water Boards. Although the Water Boards already regulate discharges of dredged or fill material to waters of the state, the Procedures extend the application of California Code of Regulations, title 23, section 3855 to individual waste discharge requirements, or waivers thereof in order to make the application process consistent regardless of whether the

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		orders are 401 certifications, waste discharge requirements, or a combination thereof.
70.17	The State Water Board's regulatory expansion is proceeding at an unsustainable pace. First, the regulatory procedures recently adopted and currently under consideration will likely stretch the Regional Water Board's limited resources past their limits. The SJTA and it members are concerned the understaffed Regional Water Boards will be overwhelmed with increased permitting requests, which in turn will lead to delays in the approval process and ultimately affect the permittee and local communities. Moreover, this strain will reverberate throughout the Regional Water Boards affecting other regulatory programs.	It is unclear which "recently adopted" regulatory procedures the commenter is referring to. The Procedures have not yet been adopted by the State Water Board. See general response #6.
70.18	Second, stakeholder and regulated community participation suffer. During the administrative process for the recently adopted Mercury Water Quality Objectives, the regulated community lamented over the State Water Board's limited stakeholder outreach, commenting that had the regulated community been involved earlier, there would have been no scramble to revise the numerous unintended consequences created by the procedures.	The State Water Board staff has conducted extensive stakeholder outreach since 2008, and has held numerous workshops to discuss the Procedures.

Comment Number	Comment	Response
70.19	Robust participation by stakeholders, environmental interests, and the State Water Board is necessary to achieve lasting regulatory programs that result in real and tangible benefits. The SJTA believes the State Water Board's current regulatory expansionism has ignored the regulated communities' concerns and limited their participation to a potentially deleterious level.	State Water Board agrees that pubic participation is essential to developing lasting and effective regulatory actions. As described in the Staff Report (Section 4: Introduction) State Water Board staff has conducted extensive stakeholder outreach since 2008, and has held numerous workshops to discuss the Procedures. The State Water Board released the draft Procedures for public review and comment twice: an initial draft Procedures was released on June 17, 2016, for a 62 day public review and comment period, and a revised version of the Procedures was released on July 21, 2017, for a 59 day public review and comment period. Staff conducted multiple public workshops during each public review and comment period, and the State Water Board held hearings to receive public comments on the draft Procedures. In order to keep apprised of future opportunities to participate in State Water Board actions, please sign up for email notifications through the State Water Board's website.

Letter 71: Orange County Transportation Authority

Comment Number	Comment	Response
71.1	While OCTA appreciates the SWRCB affording stakeholders input early in the process, we believe SWRCB needs to carefully vet our earlier input and the implications to agencies like OCTA that have committed to providing voter-approved infrastructure projects and have pioneered an advanced mitigation program.	Comment noted.
71.2	OCTA remains concerned about the redefinititon of wetlands, specifically that the additional environmental compliance processes will impact the delivery of transportation projects via voter-approved funding mechanisms. SWRCB's response to OCTA's previous comments assume that the proposed procedures will not have a significant impact on the costs associated with compliance efforts. In Representative Comment 43.17, SWRCB indicates that the procedures "will only incrementally add to" the compliance costs. Similarly, Representative Comment 35.4 states that re-classifying one aquatic type to another "is not likely to have a significant impact on the cost of the advance mitigation planning effort." While OCTA appreciates the extensive professional experience of SWRCB, this response did not make an attempt to quantify or estimate the additional costs associated with the procedures. [...] The fiscal constraints that OCTA and other transportation agencies face must be considered when finalizing the proposed procedures.	As noted in Section 11 "Economic Considerations" in the Staff Report, many of the elements of the Procedures are already applied as part of federal 404 permitting. Consequently, the Procedures will not significantly change the regulation of those projects, but will bring a consistent regulatory approach to projects discharging dredged or fill material to non-federal waters. As is further explained in section 11.3 of the Staff Report, "The universe of future applicants and projects involving dredge or fill discharges is largely unknown. Although the types of future activities that could impact waters of the state, are expected to be similar to those that have required section 401 certification and WDRs in the past (e.g., infrastructure construction and maintenance, housing development), the particular projects, extent and location of the waters that may be affected will be shaped by a number of factors, including future economic and demographic trends. Thus, only a general qualitative assessment of potential incremental costs is practicable." For more information regarding estimated compliance

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		methods and costs, see section 11.3 of the Staff Report.
71.3	OCTA was disappointed that the response from SWRCB did not address the ideas of an exemption or a grandfather clause for voter-approved projects. OCTA would like to reiterate its request that voter-approved sales tax-funded projects with clear expiration dates should be exempt from any new wetlands definition, specifically if the projects take pre-emptive steps to protect the environment. M2 includes two innovative environmental programs, the Environmental Mitigation Program and the Environmental Cleanup Program, that each have anticipated revenues of approximately $300 million over the life of the measure. This type of proactive work to protect the environment should not go unrewarded with additional compliance burdens. [...] If an exemption is unworkable, OCTA respectfully requests that SWRCB include a grandfather clause for voter-approved projects that have already been passed.	Voter-approved projects must still obtain authorization from the Water Boards regarding the discharge of dredge or fill material, and if the application is received after the Effective Date, the Procedures will apply. The applicability of the Procedures may be beneficial to OCTA's projects. As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Board's existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal thereby reducing the number of information requests and expediting the application review process. The Water Boards have, and plan to continue, to work cooperatively with applicants such as OCTA who have taken advanced planning steps to be in compliance with their environmental obligations.

Letter 72: Port of Stockton

Comment Number	Comment	Response
72.1	The Port of Stockton operates dredging operations as well as a Municipal Storm Sewer System (“MS4”) that includes several storm water ditches and retention basins. . In order to keep the Port’s storm water infrastructure maintained and properly operating to avoid flooding, the Port must perform maintenance on these MS4 facilities, which can include sediment and vegetation removal. The Port is concerned about potential liability if these facilities were considered to be Waters of the State ("WOTS") and must meet requirements in the new policy even where exempted from being considered Waters of the United States ("WOTUS").	See general responses #2 and #12.
72.2	However, State Water Board staff at one of the public workshops said that these exclusions would not be recognized under State Law, and all excluded waters, including puddles, swimming pools, artificial waters, such as treatment ponds, golf course ponds, and municipal storm water ponds and ditches would be considered WOTS. The new rule should at least contain exclusions from WOTS for MS4 ditches and detention/retention basins that are covered by an MS4 NPDES permit.	It is not clear from the comment which workshop is being referred to. However, at the August 2017 workshop, a question was posed to staff inquiring whether express exemptions for things like swimming pools, water parks, roadside ditches, etc. would be included in the Procedures. Staff responded that the jurisdictional framework only applies to wetlands that are larger than 1 acre in size, and that do not satisfy the criteria in section II.3.d for artificial wetlands. The Procedures were also revised to explicitly state that “All artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in 2, 3.a, 3.b, or 3.c are not waters of the state.” Some types of aquatic features listed in the comment may already be exempt from being

Comment Number	Comment	Response
		considered waters of the state, but other features would not meet the Water Board definition of wetland and therefore are not addressed in the jurisdictional framework. See general response #11.
72.3	In addition, the Policy should avoid duplicative regulation of waters regulated by the California Department of Fish and Wildlife's Streambed Alteration Agreement.	See general response #10.
72.4	The Port has proactively incorporated storm water capture and reuse into its plans for future droughts. The capture and storage of additional storm water requires more retention basins that will be wet and can grow wetland-like vegetation. However, these areas should not be treated the same as a natural as a "wetland" since any wetted areas in municipal detention basins must be actively managed to maintain adequate storage capacity. Thus, these facilities must have sediment and vegetation regularly removed. These operation and maintenance activities are regulated NPDES storm water permit, and these areas should be deemed non- jurisdictional areas under the proposed policy.	See general responses #2 and #12.
72.5	The main problem with the "artificial wetlands" definition is that it would arguably include storm water retention ponds and ditches since these features "[r]esulted from historic human activity and ha[ve] become a relatively permanent part of the natural landscape." (See Policy at II.4.c.)	The phrase in section II.4.c regarding features that "resulted from historic human activity and are a relatively permanent part of the natural landscape" was revised to provide greater clarity. See general response #2.

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	This definition applies regardless of the size as only Section II.4.d. specifies more than one acres size criteria, and exempts waters that meet the criteria in II.4.a-c. At the workshop, staff was told of this Catch-22 situation and stated that the intent of Section II.4.c. was to apply this where such features were abandoned/unused and reverted to semi- natural states. If that is the intent, then this should be expressly included to avoid currently managed storm water facilities from falling into this definition.	In addition, section II of the Procedures has been revised to state that all artificial wetlands that are less than an acre in size and do not satisfy the criteria set forth in 2, 3.a, 3.b, or 3.c are not waters of the state.
72.6	Request: The Procedures should define WOTS and exempt waters from the definition that fall within one of the recognized exceptions to federal jurisdiction, such as puddles, ornamental waters and swimming pools, artificial lakes and ponds (including golf course ponds), treatment ponds and other water treatment systems, and ditches, storm water conveyance channels and retention/detention ponds regulated under an MS4 permit.	See general response #2. The jurisdictional framework applies to only wetlands. Some types of aquatic features listed in the comment may already be exempt from being considered waters of the state, but other features would not meet the Water Board definition of wetland and therefore are not addressed in the jurisdictional framework. See general response #11.
72.7	The Port also worries about duplicative or additional State requirements on dredging operations. The Procedures call for additional application requirements, which provide additional burdens.	See general response #10.
72.8	In addition, the Procedures call for deference to the Corps' alternatives analysis, but contain different language regarding mitigation. The Port is concerned that the Water Boards' mitigation preferences may conflict with the Army Corps'	The Procedures are in line with the Corps 404(b)(1) Guidelines in that they include the soft preference in compensatory mitigation hierarchy, generally favoring mitigation banks and in-lieu programs over permittee responsible mitigation.

Comment Number	Comment	Response
	preferences. For example, the Water Boards might prefer in-watershed mitigation while the Corps prefers mitigation banks or other regional programs. The policy should be aimed at streamlining and facilitating important dredging projects that support navigation, commerce, and public safety instead of creating additional regulatory hurdles and time delays.	This soft preference requires Water Board staff to take into consideration the best environmental outcome to compensate for the adverse impacts. Also, as stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal thereby reducing the number of information requests and expediting the application review process.
72.9	Request: The Water Boards should not add additional requirements to Corps regulated dredging projects and should defer to Corps determinations as to the type, location, amount, and term of mitigation for all impacts where projects overlap WOTUS and WOTS, and not require additional or conflicting mitigation requirements.	The Procedures have not been revised in response to this comment. See general responses #8 and #9.

Letter 73: Prothero, Gail

Comment Number	Comment	Response
73.1	My name is Gail Prothero and I am writing today to express my support for the proposed statewide wetlands policy regulation (" Procedures for Discharges of Dredged or Fill Material to Waters of the State"), and ask you and the other board members to do the same.	The commenter's support of the Procedures is noted.
73.2	The President has recently acted to roll back federal protections for wetlands. This is wholly unacceptable, and the state must do all it can to protect our resources from federal inaction. The State Water Resources Control Board stands in a unique position to lead in the face of federal retreat. I urge you to use your authority to adopt the statewide wetlands policy with the following changes to strengthen it.	The commenter's request to adopt the Procedures is noted.
73.3	Since usually mitigation wetlands don't perform as well as natural wetlands and even when they work it often takes a decade or more before they really start to function as they should, and in order to comply with the State's "no net loss" of wetland acreage or function policy, please insist that under the new compensatory mitigation policy every wetland acre destroyed or degraded must be mitigated by at least an acre of newly restored or created wetlands.	See general response #8.
73.4	In the "Alternatives Analysis" section, the proposed policy states that every wetland-destroying project must submit an "Alternative Analysis" showing why the project couldn't be undertaken on a non-wetland site. But the policy then states that a Regional	See general response #1.

Comment Number	Comment	Response
	Water Board can ignore the Alternatives Analysis requirement for any project and it doesn't even have to provide a reason. If that is the case, wetland destruction can continue as before. Please insist that an Alternatives Analysis must be performed for every project.	

Letter 74: Rancho Mission Viejo

Comment Number	Comment	Response
74.1	RMV appreciates the revisions that the Water Board has made to the Proposed Procedures to recognize that HCPs and SAMPs may meet the definition of a watershed plan, however, in our opinion the Proposed Procedures do not provide sufficient differentiation between requirements that apply to future watershed plans versus those that may apply to existing approved SAMPs. We are most concerned with the latter and in this regard provide additional comments. In our letter of August 18, 2016 we suggested revisions to the Proposed Procedures that would differentiate between future watershed plans and existing approved SAMPs. We continue to advocate that the Water Board should recognize that approved SAMPs are a special case, and SAMP Permittees should not be required to repeat regulatory processes that they have already completed, i.e., preparation and circulation of environmental documents alternatives analysis, establishment of monitoring provisions and compensatory mitigation. Projects undertaken	The Procedures have not been revised in response to this comment. The development of watershed plans is independent from the Procedures. The Water Boards will not approve the use of watershed plans until the Procedures are adopted. In order for an applicant to qualify for the incentives outlined in the Procedures the watershed plan must include the conditions outlined in the definition of a watershed plan (Section V Definitions). Individual watershed plans will be reviewed to ensure that they meet the conditions outlined in the Procedures.

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	pursuant to approved SAMPs prior to the effective date of the Proposed Procedures should not be subject to these new procedures for 401 Certification and WDR's, and in this regard, we respectfully request that the Water Board adopt our changes as shown in italics Recommended Edits: [Language change suggestions omitted]	
74.2	Section IV.A.2. New Sub-Section h: We are requesting a new Sub-Section h as follows: Recommended Edits: [Language change suggestions omitted]	The Procedures have not been revised in response to this comment. Watershed plans, which may include SAMPs, must be approved for use by the permitting authority. Even when there is a watershed plan approved for use by the permitting authority, it is appropriate to require the information as set forth in section IV.A.2.b because this information will help inform the permitting authority's determination of the appropriate type and amount of compensatory mitigation for a given project. It is expected that the watershed plan may contain some or all of the information required.
74.3	Section IV.B.5.b.[in-text language change suggestions omitted]: Where feasible, the permitting authority will consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits with a single project, thereby reducing the cost of compliance to the applicant. If the applicant is a participant in SAMP approved by the Corps prior to the Effective Date of these Proposed Procedures that has specified compensatory mitigation requirements, the permitting authority shall accept a compensatory	The Procedures have not been revised in response to this comment. See response to comment #74.2. If the SAMP is approved by the permitting authority and analyzed in an environmental document, the Procedures provide that the amount of compensatory mitigation will generally be less. When considering whether the compensatory mitigation requirements are appropriate, it is expected that the permitting authority would consider whether the requirements are in compliance with a SAMP that has been approved by the Corps, especially when the Regional Board participated in the development of the SAMP.

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	mitigation plan that is consistent with the terms of the SAMP.	
74.4	Section IV.B.5.c.: We are requesting a new Strategy 1 be added as follows. “Strategy 1. *Applicant is a participant in a SAMP approved by the Corps prior to the Effective Date of these Proposed Procedures that has specified compensatory mitigation requirements, and Applicant has proposed compensatory mitigation consistent with the terms of the SAMP.”* Current Strategy 1 and 2 would be re-numbered as Strategy 2 and 3 respectively.	The Procedures will not include this suggested revision. See response to comment #74.3. The commenter may additionally note that the definition of a watershed plan has been revised to include SAMPs, and as such, if a SAMP is approved for use by the permitting authority, then Strategy 1 in section IV.B.5.c would apply.

Letter 75: Russian Riverkeeper

Comment Number	Comment	Response
75.1	We also ask that the Board finalize this policy as soon as possible to secure these environmental protections and provide regulatory certainty in these uncertain times.	The commenter's request for adoption is noted.
75.2	RRK urges the State Water Board to exercise its regulatory authority specifically as it relates to "isolated wetlands." Alpine meadows and vernal pools are good examples of these 'isolated' wetland areas under attack by the current Federal Administration that must be protected.	Comment noted. Under the Procedures, natural features that meet the wetland definition will be regulated as a water of the state.
75.3	First, we ask that the Board strengthen the compensatory mitigation requirements so that mitigation ratios are always one-to-one or greater to ensure compliance with the no-net-loss policy. This is particularly important as mitigation wetlands typically do not perform as well as natural wetlands.	See general response #8.
75.4	Secondly, the exemptions to the alternatives analysis requirements must be refined to ensure that the Regional Boards always follow the guidelines regarding required level of analysis.	See general response #1.
75.5	Finally, we ask that the Board close a loophole for prior converted croplands. As currently drafted, this loophole could be exploited to exacerbate the destruction of natural wetlands on certain agricultural lands to make way for urban sprawl.	See general response #3.
75.6	We also request that there is no significant deviation from the currently proposed timeline in adoption of the policy.	Comment noted.

Letter 76: Sacramento County Regional County Sanitation District

Comment Number	Comment	Response
76.1	Comments on Section II. Wetland Definition: Regional San is concerned that the Proposed Amendments will place additional administrative burdens on public agencies that might otherwise routinely qualify for the Corps' Nationwide Permits where a Pre-Certification has not been issued by the State Water Resources Control Board. In these cases, a project applicant would be required to perform (and document compliance with) the 404(b)(I) Guidelines (i.e., avoid, minimize, mitigate impacts of a proposed fill), and perhaps develop mitigation proposals accordingly. This new requirement could be easily remedied if the State Water Board were to direct staff to promptly adopt pre-certification orders for many of the Corps' Nationwide Permits that have little or no impacts on wetlands in California.	The State Water Board has historically certified a limited number of Nationwide permits that qualify as CEQA exempt. For non-CEQA exempt projects, there are currently insufficient resources to complete a full CEQA review in a limited amount of time for all classes of activities covered under approximately 50 nationwide permits for impacts in all areas of California. In addition, and as discussed in the staff report, sections 6 and 11, the Water Boards currently require some level of avoidance, minimization and compensatory mitigation in certifying projects. The Procedures will ensure that these requirements are applied consistently with the Corps, and across the Water Boards.
76.2	Comments on Section II. Wetland Definition: Item 3 states "Wetlands that meet current or historic definitions of "waters of the United States"". US EPA and the Department of the Army are proposing a revision to the 2015 definition of Waters of the United States. Historically there have been related revisions and legal challenges. Basing the definition of wetlands on "current or historic definitions" could lead to significant confusion. However, that confusion (and potential regulatory inconsistencies) could be avoided by making clear that such historical jurisdictional determinations must be confirmed by a synchronal wetlands delineation.	See general response #2.

Comment Number	Comment	Response
	Regional San suggests changing Item 3 of the proposed definition to the following [see comment letter for in-text suggestions]:	
76.3	Comments on Section II. Wetland Definition: Item 4 criteria "c" includes artificial wetlands that "Resulted from historic human activity and has become a relatively permanent part of the natural landscape". Ponds used for purposes such as wastewater treatment or groundwater recharge, or artificial wetlands created through conjunctive use of recycled water could be interpreted to be included in this component of the definition. It appears that criteria 4.d.i attempts to exempt these types of artificial wetlands that are greater than one acre, but criteria 4.d that states "the following artificial wetlands are not waters of the state unless they also satisfy another one of the above criteria" appears to prevent their exemption. Additionally, ponds that had a past use for wastewater treatment that incidentally create a wetland should not be subject to regulation. Regional San recommends revising criteria 4.d to more clearly define the artificial wetlands described in 4.d.i-viii that would not be regulated under the Proposed Amendments, as follows [see comment letter for in-text suggestions]:	See general response #2.

Comment Number	Comment	Response
76.4	Comments on Section II. Wetland Definition: Item 4 criteria d.i does not mention recycled water, which is distinct from wastewater treatment or disposal. Regional San recommends that recycled water be included in item 4.d.i as follows [see comment letter for in-text suggestions]:	See general response #2.

Letter 77: San Diego County Water Authority

Comment Number	Comment	Response
77.1	The Wetlands definition should be revised to include the presence of vegetation to be consistent with the Corps' delineation manuals. The Regional Supplement to the Corps Wetland Delineation Manual for California clearly states that wetlands are areas containing greater than five percent (.5%) cover by vegetation whereas non- wetland waters of the U.S. are features containing less than five percent (<5%) cover by vegetation. As currently drafted, the Draft Procedures will create unnecessary conflict by proposing a new wetland definition that differs from the definition that has been used by the Corps since 1977. This discrepancy will result in features being classified as a wetland by the State Board but as non-wetland waters by the Corps, leading to conflicting alternatives analysis determinations and mitigation requirements.	See general response #4.
77.2	The wetlands definition should exclude multi-benefit constructed facilities including artificial treatment wetlands as a Waters of the State and ensure that wetlands exclusions are consistent with the Corps' Clean Water Act (CWA) regulations. As proposed, the Draft Procedures may discourage development of artificial treatment wetlands. The Water Authority supports the construction of artificial treatment wetlands systems that intercept and remove nutrients and particulates, improving water quality. The Hodges Reservoir Natural Treatment System project under design and being funded through the	See general responses #2 and #12.

Comment Number	Comment	Response
	San Diego Integrated Regional Water Management Program will implement a constructed biofiltration wetland to treat seasonally degraded water quality in the reservoir and storm water inflows from the surrounding urban communities. Hodges Reservoir suffers from a host of water quality issues and is currently listed as impaired under the CWA, Section 303(d). The water quality impairments are currently being addressed through the cooperation and coordination of many regional partners including the Water Authority. The Draft Procedures should not discourage the development of artificial treatment wetlands, such as the Hodges project, through onerous and duplicative provisions. The Water Authority endorses the joint letter submitted by Irvine Ranch Water District, City of San Buenaventura, San Bernardino Valley Water Conservation District and Santa Clara Valley Water District, which addresses similar issues, and we have incorporate the recommendations in that letter by reference.	
77.3	Project acreage thresholds that trigger an alternatives analysis are unduly low and should be based on individual permanent direct impact to a wetland or water body, not cumulative project impact, similar to the Corps application of "single and complete linear project" As proposed, the Draft Procedures the project impact area threshold is so small that minor operations and maintenance activities will be burdened with elaborate alternatives analysis.	See general response #1.

Comment Number	Comment	Response
77.4	The Tier 3 category should not require projects that impact "rare, threatened or endangered species" to provide an alternatives analysis if that species is a Covered Species in a NCCP or HCP, and the project is being implemented subject to the NCCP and/or HCP. The Water Authority's comprehensive NCCP/HCP includes regional compliance with many environmental laws and regulations, including the Endangered Species Act, and provides for streamlined California Department of Fish and Wildlife Streambed Alteration permits [CFO Code § 1602] for NCCP/HCP covered activities. In addition, the Water Authority's NCCP/HCP is a foundational document for the Water Authority's Programmatic Master Plan Permit, a 50-year term Corps CWA §404 permit, streamlining 404 permitting for NCCP/HCP covered activities. The Regional Board 401 certification was approved by operation of law. In its current form, the Draft Procedures will significantly and unnecessarily stall the permitting process for activities that qualify for streamlined Corps' authorizations (permits). Lastly, we recommend changes to clarify that these Draft Procedures will not be applied to activities implemented under preexisting permits associated with an NCCP or HCP, such as the Water Authority's Programmatic Master Plan 404 Permit	The Procedures have not been revised in response to this comment. The Procedures already provide an exemption from the alternatives analysis requirement if a project was planned in accordance with a watershed plan that has been approved for use by the permitting authority and analyzed in an environmental document that includes sufficient alternatives analysis, monitoring provisions, and guidance on compensatory mitigation opportunities. As defined in section V of the Procedures, a watershed plan is “a document, or a set of documents, that is developed in consultation with relevant stakeholders, a specific goal of which is aquatic resource restoration, establishment, enhancement, and preservation within a watershed. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans should include information about implementing the watershed plan. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans. The permitting authority may approve the use of other plans, including for example, Habitat Conservation Plans (HCPs), Natural Community Conservation Plans (NCCPs), or municipal stormwater permit watershed management programs as watershed plans, if they substantially meet the specific requirements stated above. Any NCCP approved by the California Department of

Comment Number	Comment	Response
		Fish and Wildlife before December 31, 2020, and any regional HCP approved by the United States Fish and Wildlife Service before December 31, 2020, which includes biological goals for aquatic resources, shall be used by the permitting authority as a watershed plan for such aquatic resources, unless the permitting authority determines in writing that the HCP or NCCP does not substantially meet the definition of a watershed plan for such aquatic resources." The Procedures apply to applications received after the Effective Date. Dischargers with preexisting Orders should continue to comply with conditions set forth in that preexisting Order.
77.5	Compensatory Mitigation (Section IV.B.5.(c)): The Draft Procedures should include specific compensatory mitigation provisions for linear projects that would allow a project that impacts waters in multiple watersheds to consolidate wetlands mitigation at one location (one watershed), without incurring an "out-of-watershed mitigation penalty." Larger consolidated mitigation sites properly sited in the landscape have the potential for greater ecological benefits than multiple smaller sites making larger sites more environmentally preferable.'	This comment is addressed in section IV.B.5.d:"[I]f a proposed project may affect more than one watershed, then the permitting authority may determine that locating all required project mitigation in one area is ecologically preferable to requiring mitigation with each watershed."

Comment Number	Comment	Response
77.6	Definition of Watershed Plan (Section V): The Watershed Plan definition should clearly identify pre- existing NCCP/HCPs as equivalent to Watershed Plans if they have adequately addressed wetlands resources. As detailed in the Draft Procedures, determination of compensatory mitigation using a watershed approach is required by the responsible permittee. The Water Authority's NCCP/HCP covers portions of San Diego and Riverside counties to provide region-wide wetland mitigation for future projects and operations. The NCCP/HCP' s Preserve Area provides important, managed conservation sites for Covered Species and assists in building and connecting larger, biologically- diverse preserve lands. Project activities are prioritized emphasizing the expansion of habitat linkages and wildlife corridors. We highly encourage State Board staff to recognize that watershed approaches to planning have occurred outside of a Watershed Plan, as defined.	The definition of a “Watershed Plan” in section V of the Procedures states that the permitting authority may approve the use of HCPs and NCCPs as watershed plans. This process would include review and approval of plan provisions related to wetland mitigation.

Letter 78: San Diego Coastkeeper

Comment Number	Comment	Response
78.1	We also ask that the Board finalize this policy as soon as possible to secure these environmental protections and provide regulatory certainty in these uncertain times.	The commenter's request for adoption is noted.
78.2	We ask that the board strengthen the compensatory mitigation requirements so that mitigation ratios are always one-to-one or greater to ensure compliance with the no-net-loss policy. This is particularly important as mitigation wetlands typically do not perform as well as natural wetlands.	See general response #8.
78.3	Secondly, the exemptions to the alternatives analysis requirements must be refined to ensure that the Regional Boards always follow the guidelines regarding required level of analysis.	See general response #1.
78.4	Finally, we ask that the Board close a loophole for prior converted croplands. As currently drafted, this loophole could be exploited to exacerbate the destruction of natural wetlands on certain agricultural lands to make way for urban sprawl.	See general response #3.
78.5	We also request that there is no significant deviation from the currently proposed timeline in adoption of the policy.	Comment noted.

Letter 79: Sanitation Districts of Los Angeles County

Comment Number	Comment	Response
79.1	In Section II.4.a, the Sanitation Districts recommend that the Procedures specifically exclude artificial wetlands that have been restored or maintained for mitigation purposes under an approved management plan and long-term maintenance permits. These types of projects have been reviewed and approved by appropriate regulatory agencies, and provide for long-term protection and enhancement of the environment. Requiring an additional layer of regulatory approval for such projects would be time consuming and expensive with no real environmental benefit.	The Procedures have not been revised in response to this comment. Pursuant to section II.3.a of the Procedures, artificial wetlands created as mitigation for impacts to other waters of the state will always be wetland waters of the state, except where the approving agency explicitly identifies the mitigation as being of limited duration. This includes impacts where the Water Board determines that a temporal loss will occur and requires mitigation. Section II.3.a includes mitigation approved by any local, state, or federal agency, including but not limited to, the Water Boards. Note that long term management plans are currently reviewed and approved when compensatory mitigation is authorized to compensate for unavoidable impacts to waters of the state. The Procedures will not change this practice.
79.2	In Section II.4.c, the Sanitation Districts recommend that additional clarification be provided regarding the interpretation of wetlands that result from “historic human activity” and have become a “relatively permanent part of the natural landscape.” As written, this item could be interpreted to include many of the artificial wetlands that are excluded under Section II.4.d.	See general response #2.

Comment Number	Comment	Response
79.3	In Section IV.A.2.(c), the Sanitation Districts strongly recommend that the Procedures specifically exclude compensatory mitigation requirements for artificial wetlands that have been restored or maintained for mitigation purposes under an approved management plan and long-term maintenance permits. Requiring compensatory mitigation for such projects essentially amounts to redundant requirements.	Section II.3.a of the Procedures specifically recognizes artificial wetlands that have been restored or maintained for mitigation purposes as wetland waters of the state. Therefore, if these artificial wetlands are later impacted or lost due to another project, they must be compensated for in order to prevent long-term loss of wetlands. Long-term management of wetlands established for compensatory mitigation purposes should be required in the Order authorizing the mitigation.
79.4	In Section IV.A.2.d, the State Board requires, on a case- by-case basis, a water quality monitoring plan if project activities include in-water work or water diversions. The Sanitation Districts recommend limiting the Procedures to dredged or fill materials because other existing permits and processes already regulate water diversions.	As described in section I of the Procedures, the requirements are applicable to the discharge of dredged or fill material. However, if the activities associated with the discharge of dredged or fill material also include in- water work or diversions, then the Water Boards may require a water quality monitoring plan for the work.

Comment Number	Comment	Response
79.5	In the Sanitation Districts' previous comments from August 17, 2016, we recommended a water delineation approach similar to that used by the Army Corps of Engineers, in which the project proponent may assume that waters affected by the project are jurisdictional and proceed with seeking permits accordingly. The intent was to reduce or eliminate the time and cost associated with an aquatic resource delineation report by replacing this requirement with a preliminary jurisdictional determination. The State Board revised Section III and Section A.I.b. to include a preliminary or approved jurisdictional determination in addition to a final aquatic resource delineation report. The Sanitation Districts recommends that the text be revised to explicitly allow replacement of the aquatic resource report/wetland delineation with a preliminary jurisdictional determination.	The Procedures were revised to more accurately reflect Corps' practices in regards to aquatic resource reports; see comments #4.2 and #4.9 (above). The Procedures were revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2.), including reports verified per Corps RGL 16-01.

Letter 80: Santa Barbara Channelkeeper

Comment Number	Comment	Response
80.1	We also ask that the Board finalize this policy as soon as possible to secure these environmental protections and provide regulatory certainty in these uncertain times.	The commenter's request for adoption is noted.

Comment Number	Comment	Response
80.2	First, we ask that the Board strengthen the compensatory mitigation requirements so that mitigation ratios are always one-to-one or greater to ensure compliance with the no-net-loss policy. This is particularly important as mitigation wetlands typically do not perform as well as natural wetlands.	See general response #8.
80.3	Secondly, the exemptions to the alternatives analysis requirements must be refined to ensure that the Regional Boards always follow the guidelines regarding required level of analysis.	See general response #1.
80.4	Finally, we ask that the Board close a loophole for prior converted croplands. As currently drafted, this loophole could be exploited to exacerbate the destruction of natural wetlands on certain agricultural lands to make way for urban sprawl.	See general response #3.
80.5	We also request that there is no significant deviation from the currently proposed timeline in adoption of the policy.	Comment noted.

Letter 82: Santa Clara Water District

Comment Number	Comment	Response
82.1	Accordingly, we are requesting the State Water Resources Control Board (SWRCB) to exempt Multi- benefit Constructed Facilities from permitting under the Proposed Regulatory Program by excluding, for purposes of the Proposed Regulatory Program only, such facilities from jurisdictional waters of the state (WOTS). Alternatively, we ask the SWRCB to exempt Multi-benefit Constructed Facilities from the Proposed Regulatory Program's permit application requirements. At a minimum, we urge the SWRCB to exempt Multi- benefit Constructed Facilities from the Proposed Regulatory Program's new, more burdensome alternatives analysis and compensatory mitigation related requirements that should apply only to permanent net losses of waters of the state. Suggested revisions and modifications to the text of the Proposed Regulatory Program consistent with these recommended revisions are shown in redline/strikethrough in the attached Exhibit 1.	See general responses #1, #2, #8 and #11.
82.2	The Proposed Regulatory Program Mandates Water Boards Implement a New Permitting Program, Resulting in Additional Costs and Delays. We recognize staff's position is that the scope of "WOTS" that are subject to regulation is not expanded by the Proposed Regulatory Program. That said, as a practical matter the Proposed Regulatory Program mandates that the SWRCB and the Regional Water Quality Control Boards (collectively, Water Boards) implement a new and	The Procedures do not constitute a major new regulatory program. This program has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The Procedures are intended to clarify what is required for a complete application and the criteria for review and approval of applications, bringing consistency across the Water Boards. See description of “Project Need” in section 6.2 of the staff report.

Comment Number	Comment	Response
	greatly expanded permitting program for discharges of dredge or fill material to WOTS. From our "on-the-ground" perspective, the scope of the Proposed Regulatory Program's new permitting requirements and the stringency of the new permit application analysis requirement, without modification, will add tremendous cost, permit processing burdens, and delays for our Multi-benefit Constructed Facilities. Unfortunately, these new and significant burdens are not offset by any additional environmental benefit the Proposed Regulatory Program might offer due to the significant degree to which the new permitting program duplicates regulation of resources already protected under section 404 of the Clean Water Act (CWA) by the U.S. Army Corps of Engineers (USACE) and the U.S. Environmental Protection Agency (EPA) and section 1600 of the California Fish and Game Code by the California Department of Fish and Wildlife (CDFW). Specifically, the Proposed Regulatory Program imposes new and supplemental permitting requirements — all of which are different than — and in some cases conflict with — existing federal and State requirements — as summarized in Table 1, below.	See also general responses #2, #6, and #10.
82.3	For Wetlands WOTS The Staff Report states that the intent of the Wetlands Jurisdictional Framework is to exclude artificially created and/or temporary features that meet the technical definition of a wetland from regulation as wetland WOTS. However, as drafted and applied, the framework sweeps all artificial, Multi- benefit Constructed	See general response #2.

Comment Number	Comment	Response
	Facilities into the wetland WOTS designation. As discussed in Section I above, the cost, delay and other impacts associated with the Proposed Regulatory Program's mandate to obtain permits by the designation of such facilities as artificial, wetland WOTS will discourage and deter implementation of new such facilities, as well as negatively impact the management and maintenance of existing facilities. For these reasons, we urge the SWRCB to revise the Proposed Regulatory Program to exclude such facilities from the proposed permitting requirements by excluding them from designation as wetland WOTS for purposes of the Proposed Regulatory Program.	
82.4	The Proposed Regulatory Program does not provide definitions, descriptions, or guidance regarding identification of non-wetland WOTS. This, combined with the current inconsistency among Water Boards in defining such WOTS (with some Water Boards defining puddles, riffles, and certain swimming pools as WOTS), and the new Class I Priority violation status assigned by the recent updates to the Water Quality Enforcement Policy to discharges of dredged or fill material to WOTS without obtaining WDRs, create an untenable situation for applicants that must operate, maintain, repair, restore, or enhance Multi-benefit Constructed Facilities. We therefore urge the SWRCB to revise the Proposed Regulatory Program to exclude Multi-benefit Constructed Facilities from designation as (non-wetland) WOTS and permitting jurisdiction for purposes of the Proposed Regulatory Program.	See general responses #2, #11, and #12.

Comment Number	Comment	Response
82.5	If the SWRCB does not adopt the preferred recommendation, we request in the alternate that the SWRCB expand the exclusions from the Proposed Regulatory Program's permit application requirements to Multi-benefit Constructed Facilities. The activities excluded from permit application requirements under Section IV.D.2.b should be expanded and clarified. In addition, a new category of activities related to Multi- benefit Constructed Faculties should also be excluded from the Proposed Regulatory Program's permit application requirements. This approach provides less certainty for water agencies as compared to our preferred recommendation, but might also attain consistency with the State policies discussed in Section I.	See general responses #2 and #12.
82.6	The Proposed Regulatory Program's required alternatives analysis is time-consuming and costly. In addition, as summarized in Table 1, new mitigation requirements that are inconsistent with existing State and federal requirements will increase costs, and may create delay. If the SWRCB does not adopt either of the above recommendations in Section III.A (exclude from permitting requirements as WOTS) or Section III.B (exempt from permit application requirements) Multi- benefit Constructed Facilities, we urge the SWRCB at a minimum to exempt Multi-benefit Constructed Facilities from the alternatives analysis requirement and certain mitigation requirements.	See general responses #1, #2, and #6.

Letter 84: Seeman, Carolyn

Comment Number	Comment	Response
84.1	I support the proposed rule to protect wetlands, to protect our ecosystem. Please keep me apprised of your actions on the rule.	The commenter's support of the Procedures is supported. To keep apprised of developments on the Procedures, please sign up for updates on the State Water Board's website.

Letter 85: Severinghaus, Jean

Comment Number	Comment	Response
85.1	I could only find the words "sea level rise" one time in the proposed sediments and Wetlands rule and am concerned by this. While the rule does ask for "no net loss" of wetlands, I would like the rule to spell out far more clearly in full paragraph on sea level rise for all users and staff enforcers how they should enrich and increase the amounts of circulating sediments in the estuaries. This should inform users how to increase available sediments to support the natural vertical accretion of vegetated salt marshes under sea level rise and thus their survival. The SF Bay system is currently starved for sediments. This starvation condition needs to be reversed by these rules in order to preserve our vegetated wetlands. People need to understand this in these rules. Without more sediments more richly circulating we will lose our wetlands entirely with sea level rise according to the USGS and SF State studies. Please clearly direct in these rules how to reverse the paucity of sediments, and why this is	These Procedures are proposed for the regulation of discharges of dredge or fill material to waters of the state. One of the objectives of the Procedures is to advance statewide efforts to ensure no overall net loss and a long-term net gain in the quantity, quality and sustainability of wetlands in California. Sediment accretion is an important part of plans for the restoration or adaptation of wetlands susceptible to sea level rise; however, these conditions are looked at on a case-by- case basis when evaluating the success criteria in restoration plans. The overall net depletion of sediments unrelated to dredge or fill activities is outside of the scope of this project.

Comment Number	Comment	Response
	important with sea level rise.	

Letter 86: Shapiro, Natalie

Comment Number	Comment	Response
86.1	Please support the proposed statewide wetlands policy regulation ("Procedures for Discharges of Dredged or Fill Materials to Waters of the State"). Because President Trump is rolling back federal protections for wetlands, the state of California unfortunately will have to take the lead on protecting these important natural resources. The State Water Resources Control Board can be a leader in protecting wetlands, so please adopt the "Procedures for Discharges of Dredged or Fill Materials to Waters of the State".	Comment noted.
86.2	One is to change the new compensatory mitigation policy so that for every wetland acre destroyed or degraded, there must be at least an acre of newly restored or created wetlands.	See general response #8.
86.3	The other change, in the "Alternatives Analysis" section, states that every wetland- destroying project must submit an "Alternatives Analysis" showing why the project can't be done on a non-wetland site. However, the policy then states that a Regional Water Board can ignore the Alternatives Analysis requirement for any project and it doesn't have to provide a reason. Please make sure that an Alternatives Analysis must be performed for every project.	See general response #1.

Letter 87: Siskiyou County Board of Supervisors

Comment Number	Comment	Response
87.1	This current version of the Preliminary Draft continues to duplicate efforts already regulated by federal, state, and local laws through activities under the US Army Corps of Engineers Clean Water Act, and the EPA's regulations for discharges of pollutants in waters of the United States.	See general response #10.
87.2	The wetland definition included in the Preliminary Draft has the real and lasting potential to drastically increase the acreage of property regulated as a wetlands, because it would allow wetted areas without a nexus to a water of the United States to be regulated...	The wetland definition includes all the various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services. For more information regarding the how the wetland definition was developed, please see section 6.3 of the Staff Report and the Technical Advisory Team memoranda. The definition has been found to be scientifically sound by external peer reviewers selected independently through an established process by CalEPA. Unlike the Clean Water Act, the jurisdictional scope of the Porter-Cologne Water Quality Control Act does not turn on determinations of navigability or nexus to navigable waters because the authority to regulate state waters is not predicated on the ability to regulate interstate commerce.

Comment Number	Comment	Response
87.3	Implementation of the Preliminary Draft would result in clear government overreach, overlapping and more complex permitting processes and requirements, with much confusion regarding the different definitions of wetlands between state and federal agencies.	See general responses #4, #9, and #10.
87.4	Lastly, adding more burden and processes on the State Board itself would be detrimental to an agency that has limited staff and funding resources, would interfere with already existing programs, and would further delay projects performed between the State Board and landowners.	See general response #6.

Letter 89: Teichert Materials

Comment Number	Comment	Response
89.1	The Procedures anticipate a significantly more vigorous permitting process when compared to the status quo. Presently, an application for a water quality certification under section 401 of the Clean Water Act (CWA) and/or an application for Waste Discharge Requirements (WDRs) under Porter-Cologne Water Quality Control Act do not require submittal of many of the documents and analysis that would be required by the Procedures. For example, at least for projects located within the boundaries of the Central Valley Regional Water Quality Control Board (RWQCB), applicants have never before been required to prepare an alternatives analysis as part of these applications; rather, this exercise was performed at the direction of the U.S. Army Corps of Engineers (Corps) as part of an application filed pursuant to Section 404 of the CWA, and the Central Valley RWQCB deferred to this analysis.	As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal thereby reducing the number of information requests and time spent waiting through the application review process. In addition, the Procedures already require that Water Board staff defer to the Corps in cases in which the Corps requires an alternatives analysis, unless the Water Boards were not provided an opportunity to consult during the development of an alternatives analysis, the alternatives analysis does not adequately address issues raised during consultation, or the proposed alternatives do not comply with water quality standards. Deference to the Corps is intended to reduce duplication of requirements from both agencies, not create regulatory conflicts. An applicant will be expected to submit materials that are submitted to the Corps when the Corps requires an alternatives analysis for a complete application. Applicants are encouraged to engage the Water Boards before the application process to

Comment Number	Comment	Response
		ensure that a proposed alternative does not violate state water quality standards. Also see general response #1.
89.2	While Teichert appreciates the Procedures' emphasis on early coordination between the RWQCBs, applicants and any other relevant agencies, there is still a great deal of uncertainty about exactly how this coordination will occur and whether the RWQCBs will be able to effectively process applications filed under the Procedures without significant additional cost and delays.	See general response #6.
89.3	The Procedures propose a more substantial application process than is currently required. Moreover, RWQCB staff are expected to coordinate with applicants and other agencies earlier and to provide more substantive feedback at all points of the process.	See general response #6.

Comment Number	Comment	Response
89.4	By way of example, the following are some of the tasks that RWQCB would be expected to preform pursuant to the Procedures, and Teichert's rough estimate of the current and projected time associated with each task: 1) Pre-application consultations (currently: 1 hour; projected: minimum of 4 hours); 2) Verify wetland delineations (currently: 0 hours; projected: minimum of 2-site visit coordination with Corps); 3) Alternatives analysis (currently: 0 hours; projected: minimum of 4 hours - identification of alternatives, review of applicant's alternatives information; coordination with Corps); 4) Development of mitigation proposals (currently: 2 hours to review conceptual materials prepared for the Corps projected: minimum of 4 hours to review designs or permittee-responsible construction, site visits, coordination with Corps).	The estimates provided in this comment do not accurately reflect current practices at the Water Boards for processing applications to discharge dredged or fill materials. See also general response #6.
89.5	The Procedures do not qualify the additional staff time that will be required to perform these tasks. Teichert believes that a review of current and projected staff workloads must occur prior to the implementation of the Procedures. if this assessment reveals that current staffing levels are not adequate to process applications filed under the new framework without additional delays and/or costs to applicants, the Board should delay implementation of the Procedures until additional staff can be hired.	See general response #6.

Comment Number	Comment	Response
89.6	Phased implementation of Procedures: As expressed in our original comment letter, Teichert believes that an essential component of the success of the Procedures is a requirement that the RWQCBs enter into agreements with the Corps and any other relevant agencies to establish a framework for coordinating on applications that involve the fill of wetlands/waters. These agreements should address, at a minimum, the process for pre-application consultations (including the goals of these consultations and the responsibilities of all parties with respect to the consultations), provide guidance for coordinating on various common aspects of regulatory applications (e.g., alternative/LEDPA determinations, mitigation proposals, long-term management requirements), and put in place a process for resolving conflicts, should they occur. Without such agreements in place, the agencies are likely to analyze their individual applications in isolation, resulting in potentially inconsistent determinations affecting the same property or project.	Language in the Procedures states that applicants may consult with the Water Boards early in the application process. Pre-application meetings or informal consultation with the Water Boards benefit the applicant by providing useful information which could prevent delays during application review. For complex projects, this should be done ideally during the early planning stage of the project. As to agency coordination, the Water Boards are committed to increasing interagency coordination in order to streamline application review for all parties involved and expect to try and reach agreements with other agencies that facilitate coordination. However, the Water Boards cannot mandate a pre-application process that must be followed by other agencies and any effort to reach interagency agreements should be pursued after the Procedures are adopted. Applicants should keep Water Board staff informed of all scheduled agency reviews and pre- application site visits so that staff may participate and provide applicants with any information that may assist in preventing delays later. For example, applicants should notify the Water Boards if the Corps is reviewing their project during the Corps' regularly scheduled "pre- application" meetings, which may be attended by Water Board staff. In addition, the Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures.

Comment Number	Comment	Response
89.7	Teichert requests, however, that the Board direct that, if/when the Procedures are adopted, the RWQCBs should immediately begin coordinating with the agencies to formulate these agreements. Furthermore, in recognition of the significant risk of delays and increased costs, Teichert believes that the Board should not begin implementing the Procedures until these agreements are in place.	It would not be practical to implement the regulations in smaller, incremental steps, as it would entail years of continuous regulatory change for both the Water Boards and the regulated community, likely leading to increased uncertainty and delays. The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures. However, while the Procedures have been in development since 2008 and there has been extensive outreach to communicate with stakeholders during this process, the State Water Board recognizes that once the final Procedures are adopted, it would be reasonable to allow time for applicants to come into compliance and become familiar with the Procedures. Therefore, the Procedures will not be effective until nine months after approval by the Office of Administrative Law.
89.8	Several interested parties, including Teichert, requested clarification regarding the scope of these "climate change assessments" (CCA).	See general response #7.

Comment Number	Comment	Response
89.9	Teichert understands the Board's desire to retain flexibility with respect to CCAs. However, in order to make the permitting process as streamlined and productive as possible, the Board should provide some guidance in the Procedures addressing the essential elements to be including in a CCA. The following are a few suggestions: Make clear that RWQCB staff should first consider a project's CEQA climate change analysis, if one exists. If that analysis is sufficient, not further CCA should be required.	See general response #7.
89.10	Make clear that projects of a short duration or having minimal impact do not require a CAA. Moreover, if a CCA is required, the level of detail should be commensurate to project impacts. For example, a few paragraphs is probably sufficient for a project with fewer wetland impacts, while a larger project with increased impacts would require a more substantial CAA.	See general response #7.
89.11	A CCA should only require discussion of environmental stressors that are relevant to the location of the project and its proposed mitigation. For example, a project in Sacramento County should not require an assessment of sea level rise.	See general response #7.

Letter 90: Tippets, Bill

Comment Number	Comment	Response
90.1	My name is Bill Tippets and I am writing today to express my support for the proposed statewide wetlands policy regulation ("Procedures for Discharges of Dredged or Fill Materials to Waters of the State"), and ask you and the other board members to approve the regulation. California has lost over 90% of its historic wetlands, and we must do all we can to stop further harm, protect what remains, and rebuild some of what we've lost.	The commenter's support of the Procedures is noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.
90.2	The latest version of the SWRCB's wetlands rule would adopt a new definition of wetlands and lead to improved wetland protection. I urge the State Water Board to adopt these new regulations, with two changes.	The commenter's request for adoption is noted.
90.3	First, the science of wetland restoration or creation is far from perfect and usually mitigation wetlands don't function as well as natural wetlands and even when they work it often takes a decade or more before they really start to function as they should. For this reason, and in order to comply with the State's "no net loss" of wetland acreage or function policy, the Board must require the new compensatory mitigation policy to mitigate every wetland acre destroyed or degraded with at least an acre of newly restored or created wetlands. Very limited/sensitive wetland types such as vernal pools, alkaline wetlands and similarly scarce types should be mitigated at least 2:1.	See general response #8.

Comment Number	Comment	Response
90.4	Second, the “Alternatives Analysis” section is inadequate. The proposed policy states that every wetland- destroying project must submit an “Alternatives Analysis” showing why the project couldn’t be undertaken on a non-wetland site. This is the heart of the regulation. But the policy then states that a Regional Water Board can ignore the Alternatives Analysis requirement for any project – without any factual basis for to justify that decision. That “escape clause” would allow wetland destruction to continue as before the regulation. The State Water Board must require a full and complete Alternatives Analysis to be performed for every project. With these changes, the "Procedures" will greatly enhance our chances to preserve our state's wetlands.	See general response #1.
90.5	Approval and implementation of the revised regulation is needed to protect wetlands against the rollback of federal protections. This is wholly unacceptable, and the State must do all it can to protect our resources from federal inaction. The State Water Resources Control Board stands in a unique position to lead in the face of federal retreat. I urge you to use your authority to adopt the statewide wetlands regulation (revised as described above).	Comment noted.

Letter 91: Turner, Janis

Comment Number	Comment	Response
91.1	I am writing to express my support for the proposed statewide wetlands policy regulation.	The commenter's support for the Procedures is noted.
91.2	Despite all of this, the President recently acted to roll back federal protections for wetlands. This is unacceptable! The state must do all it can to protect our resources from federal inaction. I urge you to use your authority to adopt the statewide wetlands policy.	The commenter's request for adoption is noted.

Letter 92: U.S. Environmental Protection Agency, Region IX

Comment Number	Comment	Response
92.1	However, the lack of a factual determination on key compliance factors could make resolution of potential conflicts between state and federal permitting decisions more difficult, and could expose the state's decisions to otherwise avoidable challenges of being arbitrary and capricious. As described in 40 C.F.R. § 230.11, factual determinations are simply written findings of compliance with the Guidelines based on factual evidence. For the ease and consistency of implementation for state regulatory staff and for clarity of expectations to the regulated public, EPA continues to recommend that the Procedures clearly articulate potential factors to be used in	The Procedures have not been revised in response to this comment. Findings of significant degradation related to a proposed discharge of dredged or fill material will be based on State Supplemental Guidelines Subpart B (Compliance with the Guidelines), section 230.10(c), which lists the environmental effects to be considered. These effects are the same as listed in the federal Guidelines without alteration. The State Supplemental Guidelines did not retain the entirety of subparts C through F, and accordingly omitted the references to those subparts in section 2301.10(c). Per the State Supplemental Guidelines, the permitting authority is not required to make factual

Comment Number	Comment	Response
	determining compliance, like those enumerated in Subparts C-G of the Guidelines, and require that final regulatory actions include explicit determinations of compliance with reference to these factors. If the State Board intends to establish the Procedures without specifying decision factors, EPA recommends the State Board establish such factors in a subsequent rulemaking effort.	determinations in writing with the specificity that is required by the federal guidelines. Instead, the permitting authority is not limited in what information it may use to determine whether a discharge of dredged or fill material will cause or contribute to significant degradation of waters of the state. The list of illustrative examples set forth in subparts C through F may be informative for the analysis for any given project, but the permitting authority is not required to evaluate the specific considerations outlined in subparts C through F, and the permitting authority may also consider other factors, such as issues raised during the CEQA analysis. Likewise, the State Supplemental Guidelines do not include Subpart G, which relates to evaluation and testing methods. Instead, the need for testing of dredged or fill material will be evaluated by the permitting authority based on available information about the impacted waterbody, including applicable contaminant research, TMDLS, chemical and biological reports, CEQA analysis, and the composition of the dredged or fill material itself.

Letter 93: Ventura County Watershed Protection District

Comment Number	Comment	Response
93.1	The proposed regulations repeatedly state the requirements for actions which "directly" impact waters of the state or waters of the U.S., but do not always distinguish between temporary and permanent impacts. Please provide clarity in information or alternatives analyses requirements for temporary and permanent impacts.	The Procedures have not been revised in response to this comment. Water Board staff will verify permanent and temporary impacts to waters in consultation with the applicant and other permitting agencies considering project site and parameters. Temporary impacts are commonly understood as those which eventually reverse, allowing the affected resource to return to its previous state. Distinguishing between permanent and temporary impacts will be based on site-specific information including the type of water, the severity and duration of the impact, the type of equipment, and environmental conditions.
93.2	What basis was used to develop the tiers for the alternatives analysis thresholds in Section A.1.h? These tier categories are much more restrictive than the USACE Nationwide Permit thresholds, requiring 404(b)(1) level of alternatives analysis which adds substantial burden to developing applications. Guidance from the permitting authority to reduce the specific types of impacts to waters of the state on a case-by-case basis would be helpful.	See general response #1.
93.3	How would the regulations affect maintenance of existing facilities, which include periodic temporary impacts, as well as occasional minor new permanent impacts?	See general responses #1 and #12.The Procedures apply to applications received after the Procedures' Effective Date. Maintenance activities that are currently authorized by Water Board Orders should continue to comply with the terms and conditions of those Orders. However, applicants that need to re-apply for authorization due to the expiration of an existing Order may be

Comment Number	Comment	Response
		subject to these Procedures.
93.4	It is unclear if there will be one new permit application package that will be required for all types of regulatory actions including the 401 Certifications, Waste Discharge Requirements, and waivers. Clarification is requested.	An application will be required for all projects that propose a discharge of dredged or fill materials to waters of the state, unless the facility does meet the definition of a water of the state (section II.3.d), or any of the exclusions outlined in section IV.D apply. These Procedures extend the application of California Code of Regulations, title 23, section 3855 to individual waste discharge requirements and waivers thereof.

Letter 94: Vyverberg, Kirk

Comment Number	Comment	Response
94.1	I am writing to urge you to act quickly to adopt a statewide wetlands policy that will protect California's wetlands (Statewide Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, July 21, 2017 draft proposed amendments).	The commenter's request for adoption is noted.
94.2	The compensatory mitigation requirements should be strengthened to ensure that every lost wetland acre is replaced. The minimum mitigation ratio of one-to-one and the case-by-case consideration of mitigation ratios of less than one are not appropriate because these ratios fundamentally undermine the State's existing no- net loss policy, and do so in the following manner: § The scientific research has clearly shown that mitigation wetlands do not fully replicate natural wetland functions and values. This means that a mitigation ratio of one-to- one is actually a ratio of one-to-some-amount-less-than-one immediately upon application.§ Conserving one mile of stream for each stream mile lost to development still means there is one less stream mile on the landscape. To achieve zero net loss of our wetland resources will require a baseline mitigation ratio of two- to-one, and if we are going to turn the tide on the ongoing loss of our wetlands then there can be no option for mitigation ratios of less than that.	See general response #8.

Comment Number	Comment	Response
94.3	The best way to remedy this problem is to eliminate the exclusion for PCCs making wetlands on PCCs subject to the same permitting requirements as any other wetlands. Eliminating the exclusion would help to create a policy that is clear, consistent, and protective of wetlands and strengthen the Regional Boards' authority over wetlands on PCCs to ensure compliance with the statewide no-net-loss policy.	See general response #3.

Letter 95: Western Power Trading Forum

Comment Number	Comment	Response
95.1	Accordingly, the Procedures should be crafted to avoid onerous and duplicative regulatory processes that increase burdens on the development of renewable energy projects.	See general responses #6 and #10.
95.2	WPTF continues to have concerns with the jurisdictional scope of the draft Procedures, which have significant overlap with the federal Clean Water Act (CWA) Section 404 permitting program and the California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration Agreement (LSAA) program under Fish & Game Code section 1600 et seq.	See general response #10.

Comment Number	Comment	Response
95.3	As a general matter, WPTF continues to support the comments and recommendations filed on August 18, 2016 by a consortium of organizations (including, among others, the Large Scale Solar Association) on the prior draft of the Procedures, and we do not believe the SWRCB's responses to comments adequately address these extensive stakeholder comments, particularly those addressing duplicative and overlapping jurisdiction by multiple agencies, and the overly burdensome regulatory climate that is sure to ensue.	See general response #10.
95.4	T[t]he draft Procedures and responses to comments fail to explain or quantify which waters of the State that the SWRCB believes are not adequately protected under the LSAA program. Before adopting any Procedures, we ask that the SWRCB provide specific examples of waters of the State that CDFW's existing LSAA program has not adequately addressed in the past and would not adequately address in the future. Once that list has been populated we ask that the Procedures only pertain to the waters of the State that are not already covered under the LSAA program in order to avoid duplicative permitting and mitigation.	The Procedures were not revised in response to this comment. While a comparison of waters regulated by CDFW and the Waters Boards is not available, the Project Need section of the Staff Report describes wetland trends monitored by the U.S. Fish and Wildlife Service. While overall loss of wetlands seems to have slowed in California, the extent and health of remaining wetlands are still threatened by a host of factors, including habitat fragmentation, altered hydrology, altered sediment transport and organic matter loading, dredging, filling, diking, ditching, shoreline hardening, pollution, invasive species, excessive human visitation, removal of vegetation, and climate change. However, the loss of wetlands is not the only reason these Procedures are necessary. The Project Need section of the Staff Report describes the other reasons why the proposed Procedures were developed, including the need to provide consistency for the Water Boards regulation

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		of discharges of dredged or filled materials, and to align these procedures with federal requirements, including alternatives analysis and the use of the watershed approach to mitigation. Limiting the scope of the Procedures to only a subset of waters would complicate the regulatory landscape.
95.5	WPTF also has concerns regarding the procedures being utilized by the SWRCB for the promulgation of the Procedures. The SWRCB asserts that the Procedures "will have the same force and effect as a regulation" (see Response to Comment 46.4), but that because they have been crafted as a revision to a water quality control plan, they are exempted from the State's Administrative Procedures Act requirements regarding regulations pursuant to Gov. Code section 11353. However, the SWRCB is not, in fact, adopting or revising a water quality control plan in this case. Rather, the SWRCB is proposing to adopt extensive regulatory requirements similar to the requirements contained in analogous Corps' and CDFW regulatory programs that were adopted via formal rule-making processes. Such regulatory changes as those proposed by the SWRCB should follow the Administrative Procedure Act and be subject to full review by the Office of Administrative Law.	Section 4.6 of the Staff Report outlines the process and standards in which the Administrative Procedures Act establishes for rulemaking. The Procedures, as well as other state regulations, must be adopted in compliance with regulations set forth by the Office of Administrative Law. Section 11353 of the Administrative Procedures Act governs adoption or revision of water quality control plans, and exempts the State Water Board from the remainder of the act. (Gov. Code, § 11353.) This section requires, among other things, that the State Water Board follow all procedural requirements of Division 7 of the Water Code, which includes the opportunity for public comment and a public hearing. The State Water Board will follow all of these requirements in considering the Procedures for adoption. As part of a water quality control plan, if adopted, the Procedures will have the same force and effect as a regulation, but it will not be included as part of the California Code of Regulations.

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95.6	WPTF is also concerned that draft Procedures would create a regulatory program that has significant overlap with federal law under Section 404 of the CWA. The draft Procedures create mitigation requirements that are similar, yet not identical, to those regulated by the Corps under Section 404 of the CWA. Like the issue of draft Procedures requirements overlapping with CDFW regulations, the SWRCB draft Procedures would create inconsistency and duplicative effort between mitigation requirements for the SWRCB and the Corps, thereby further delaying review times for important state infrastructure projects.	The Procedures will not create a new regulatory program. The Water Boards established the state water quality certification program in 1990. As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal, thereby reducing the number of information requests and expediting the application review process. Also, see general responses #8 and #10.

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95.7	WPTF supports the edits made to the draft Procedures that provide exemptions from alternative analysis requirements for projects which meet the terms and conditions of one or more of the SWRCB certified Corps' general permits. However, we recommend the draft Procedures should exempt all projects that fall under Corps' general permits, not just those general permits that have been certified by the SWRCB. Alternative analysis is already required for Corps review under Section 404 of the CWA for projects that do not fall under a Corps' general permit.	See general response #1.
95.8	Regardless of what projects would be required to conduct alternative analysis, under the draft Procedures, as with Section 404 of the CWA, it is required that a permitted project that undergoes this analysis be the least environmentally damaging practicable alternative (LEDPA). The draft Procedures in their current form contain alternative analysis requirements that are similar but not exactly the same as federal requirements. Therefore, LEDPA determinations made by state and federal agencies may not be consistent, and state and federal agencies may disagree on the level of analysis required. WPTF understands that SWRCB attempted to resolve this issue in the current form of the draft Procedures with the provision that the SWRCB shall defer to the Corps' determinations on the adequacy of the alternatives analysis unless the SWRCB Executive Officer or Executive Director writes to the Corps. However,	See general response #1. The Water Boards are interested in and have discussed an MOU with the Corps. The Corps has responded that any such MOU should not be developed until after adoption of the Procedures.

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	we believe that this provision does not go far enough to avoid and resolve disputes on LEDPA determinations as there is no formal agreement and associated process that has been established between the Corps and the SWRCB (i.e., no defined process after the letter has been received from the SWRCB or established statutory timelines). In the absence of consistent LEDPA requirements and determination procedures between the SWRCB and the Corps or a well-defined resolution process for disagreements between these agencies, the draft Procedures provide further opportunity for extended permit review time resulting in increases to overall project costs.	
95.9	The Regional Water Quality Control Boards (RWQCBs) under the oversight of the State Board should work with CDFW and Corps' California District Offices to create a joint application procedure for impacts to wetland and water features to including dredge and fill impacts as well as other impacts regulated by the agencies (e.g., removal of riparian vegetation under the CDFW LSAA Program). WPTF proposes that a JARPA program be extended to the entire State of California in order to provide permitting efficiencies.	Comment noted. While a joint application may be useful, this request is outside the scope of the Procedures.
95.10	The RWQCBs should also work with CDFW and the Corps' California District Offices to create a uniform mitigation assessment methodology which would provide for the equivocal assessment of ecological and hydrological function for impacts to	Comment noted. Section 6.7 of the Staff Report provides the information about assessment methods, including the California Rapid Assessment Method. Because other types of assessment methods – for instance Level 3 assessments - could possibly be

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	water and wetlands.	more appropriate for a selected site or type of habitat than CRAM, the Procedures allow the use of a another method, approved by the permitting authority.
95.11	Either all NWPs or specific NWPs certified under the Section 401 program and regional general permits (RGP) specific to the California Corps' District Offices should be certified by the SWRCB in a parallel process with revisions of the Procedures. In the event the SWRCB chooses to not certify the NWP program in its entirety, but would rather review each individual General Permit for certification, we have identified the most crucial permits in the construction of renewable energy projects that we urge the SWRCB to certify in conjunction with adopting revised Procedures: NWP 12- Utility Line Activities, NWP 14 - Linear Transportation Projects, NWP 43-Stormwater Management Facilities, and NWP 51 - Land Based Renewable Energy Facilities.	The State Water Board has historically certified a limited number of nationwide permits that qualified as CEQA exempt. For non-CEQA exempt projects, the State Water Board would need to conduct a full CEQA review to certify nationwide permits. However, there are currently insufficient resources to complete a full CEQA review in a limited amount of time for all classes of activities covered under approximately 50 nationwide permits for impacts in all areas of California. For a list of pre-certified nationwide permits please refer to the State Water Board's General Order on the State Board's website: http://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.shtml. For Corps' general permits that are not nationwide permits, the commenter should contact the appropriate regional water quality control board (or the State Water Board if the permit area falls within the jurisdiction of more than one regional water quality control board) to request coordination for the certification of Corps general permits. Coordination would include the proper compliance with the CEQA.

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95.12	It is understood that it is the intent of the SWRCB to protect wetlands that are no longer subject to federal jurisdiction due to the multiple U.S. Supreme Court decisions and the uncertainty created by those decisions. However, the currently proposed draft definition claims all “Waters of the U.S.” to also be waters of the State. This definition, as currently set forth, exceeds the initial intent of the SWRCB, and would create an unnecessary jurisdictional overlap. If the SWRCB intends to regulate federal jurisdictional waters as waters of the State, then the State should seek delegation of the Section 404 Program to reduce overlapping and potential contradictory jurisdictions and permitting processes.	Per California Code of Regulations, title 23, section 3831(w) all waters of the United States are also waters of the state. The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure the Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof. In addition, the State Water Board is not seeking approval to administer the section 404 program at this time. The Army Corps will remain responsible for issuing section 404 permits. Should the State Water Board seek approval to administer the section 404 program in the future, it would follow the procedures for assumption outlined in section 404. Also see general response #10.

Letter 96: Westlands Water District

Comment Number	Comment	Response
96.1	Despite its name, the Wetlands Definition and Procedures is not about water - it is about power: namely, an assertion of power largely in response to recent court decisions and administrative changes regarding the federal Clean Water Act and concerns about protecting our natural resources in California.	The Procedures have many objectives, one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. In addition, the proposed Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state and to prevent further losses in the quantity and quality of wetlands in California. The Staff Report explains the need for the Procedures in the Project Need section. In addition, it is important to note that scoping for the Procedures was initiated in 2007. See also general response #9.
96.2	Any exemptions or exclusions provided for agriculture and farming in the federal Clean Water Act ought to be included in the Wetlands Definition and Procedures without additional constructs to protect against imagined hobgoblins. To do otherwise will not only cause significant confusion between the overlapping regulatory regimes, but will be met with unqualified and unhesitating resistance from a united agricultural community in California.	As set forth in section D, and as described in section 10.6 of the Staff Report, agricultural activities that are exempt under Clean Water Act section 404(f) are excluded from the application procedures requirements set forth in the Procedures. Examples of excluded activities include normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; and maintaining or reconstructing structures that are currently serviceable. For these reasons, it is expected that the Procedures would not add regulatory ambiguity to agricultural operations, nor would the Procedures add duplicative requirements.

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96.3	The State Water Board Does Not Have the Authority to Regulate "Waters of the United States" As the United States Army Corps of Engineers made clear in its letter to the State Water Board on August 15, 2016, the State Water Board lacks authority to regulate the discharge of dredged or fill material into Waters of the United States. Section 404 of the federal Clean Water Act clearly preempts State law or regulation with respect to the regulation of dredge and fill operations in Waters of the United States. This is further supported by the fact that the United States Congress created a mechanism in section 404(g) and a process in section 404(h) through which a State may administer a permitting program for discharges of dredged or fill material into Waters of the United States which are within the particular State's jurisdiction. Absent this mechanism and process, Congress clearly created a regime in which the States lacked the authority to regulate the discharge of dredged and fill material. The Wetlands Definition and Procedures purport to "apply to all waters of the [S]tate," which, absent an explicit exemption, includes those waters that are also Waters of the United States -an activity that is preempted by federal law.	See general response #9.

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96.4	The State Water Board's response to the Army Corps' comment is unconvincing. In its response, the State Water Board alleges that it is not "seeking to initiate program assumption for Section 404 permitting at this time," and is presumably advancing the regulations under section 401. This despite the fact that the "final element of the [Wetlands Definition and Procedures] is regulatory procedures for the discharge of dredged or fill material into waters of the state." The explanation for the fact that the State Water Board is using the exact same terminology found in Section 404 of the Clean Water Act for a program purportedly being administered under Section 401 is that "the introduction of new state- specific terms could cause confusion regarding the meaning of new terms." The use of the same terms only creates more confusion and conceals a point of greater importance: the legal authority of the State Water Board to promulgate the Wetlands Definition and Procedures in the first place. It certainly appears the State Water Board is in fact regulating the discharges of dredged and fill material despite the name or language used in the proposed regulations.	The State Water Board is not seeking to initiate program assumption for section 404 permitting at this time. The Corps will continue to administer the section 404 program. As such, the Procedures propose deferring to the Corps LEDPA determinations in waters of the United States unless certain criteria for an exception apply, as well as Corps delineations in waters of the United States. The Corps will also continue to be responsible for enforcing the terms of the section 404 permits. The Corps will also continue to consult with other agencies that may also have jurisdiction over the proposed project. The Procedures largely use the same terminology as the section 404 program because such terms are familiar to people already familiar with the section 404 program. The introduction of new state-specific terms could cause confusion regarding the meaning of new terms. By its express terms, the Procedures apply to the discharge of dredge or fill materials. As explained in more detail in general response #9, the Clean Water Act does not preempt the state from regulating the discharge of dredge or fill material. The State Water Board's authority to adopt the Procedures is from the Porter-Cologne Act, as well as Clean Water Act section 401 where there are waters of the United States.

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96.5	A similar argument may be anticipated for the distinction between Section 404's use of individual or general "permits," and the "Orders" that would be issued under the purported Wetlands Definition and Procedures. The nomenclatural differences between "permit" and "order" are likely without significance, as Orders issued by the State Water Board and the various Regional Water Quality Control Boards ("Regional Boards") carry the same effect on the person to whom the Order runs: that of granting permission to conduct a certain activity within prescribed parameters. Like the point above, an attempt by the State Water Board to exploit certain terms or their definitions to avoid federal law is unconvincing; mankind may indeed be governed by names, but in the present case the nomenclatural manipulation rings hollow.	The Procedures use the term “Order,” as defined in section V, because it more precisely describes the range of actions that the Water Boards may take, i.e., waste discharge requirements, waivers of waste discharge requirements, water quality certification, or a combination thereof. For example, for waters of the United States, the Corps issues a section 404 permit, whereas the Water Boards issue a section 401 certification. Although a permit and an order have the same functional effect on the regulated community and Water Board orders are often colloquially referred to as permits, the more inclusive and accurate term is “orders.”

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96.6	Water Code Section 13392(b) Requires the State to Have an Approved Permit Program in accordance with the Clean Water Act in order to Regulate Discharges of Dredged or Fill Material Contemplation of the entire state and federal statutory scheme further illustrates the separation between regulation of "waste" and the regulation of dredged and fill activity. Chapter 5.5 of the Water Code, which provides for "Compliance With the Provisions of the Federal Water Pollution Control Act as Amended in 1972," explicitly references dredged and fill material. Water Code Section 13372(b) provides: The provisions of Section 13376 requiring the filing of a report for the discharge of dredged or fill material and the provisions of this chapter relating to the issuance	See general response #9.

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	of dredged or fill material permits by the state board or a regional board shall be applicable only to discharges for which the state has an approved permit program, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, for the discharge of dredged or fill material. Water Code Section 13372(b) is clearly consistent with the Army Corp's comment letter and interpretation of federal authority. The Legislature has provided a clear directive: a state can regulate the discharge of dredged and fill material if it coordinates with the federal authorities and operates under an approved permit program.	
96.7	The State Water Board Does Not Have the Authority to Regulate the Discharge of Dredged or Fill Material that Does Not Constitute "Waste" The State Water Board does not have carte blanche authority under the Porter- Cologne Act to regulate the discharge of dredged and fill material. The State Water Board must act within the appropriate framework provided by the Legislature through the Water Code. The primary step of statutory construction, the purpose of which is to gauge the appropriate boundaries of lawful authority, is to determine legislative intent. The Porter-Cologne Act grants the State Water Board authority to regulate "waste" to attain high water quality "within a framework of statewide coordination and policy." This statewide framework, itself embedded within a system of cooperative federalism, was contemplated and intended by the Legislature.	See general response #9.

Letter 97: Wilder, Jenny

Comment Number	Comment	Response
97.1	I am writing today to express my support for the proposed statewide wetlands policy regulation ("Procedures for Discharges of Dredged or Fill Materials to Waters of the State"), and ask you and the other board members to do the same.	The commenter's support for the Procedures is noted.
97.2	We can do this by regulation which includes a compensatory mitigation policy that requires every wetland acre destroyed or degraded must be mitigated by at least an acre of newly restored or created wetlands. This mitigation must be included.	See general response #8.
97.3	Despite all of this, the President has recently acted to roll back federal protections for wetlands. This is wholly unacceptable, and the state must do all it can to protect our resources from federal inaction. The State Water Resources Control Board stands in a unique position to lead in the face of federal retreat. We urge you to use your authority to adopt the statewide wetlands policy.	The commenter's request for adoption is noted.

Letter 99: Defenders of Wildlife et al.

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99.1	While the draft policy includes a framework to ensure that the amount of effort for an alternatives analysis is commensurate with the project's impacts, it then appears to give the Regional Boards unbounded discretion to permit a less rigorous analysis, thus undermining the carefully-crafted framework. We recommend that the SWRCB eliminate or limit the Regional Boards' discretion to permit a less rigorous analysis than that which is outlined in the framework.	See general response #1.
99.2	Second, the compensatory mitigation requirements are critical to ensure that, where impacts are not avoidable, projects still comply with the no-net loss policy. It is well established that mitigation wetlands do not perform as well as natural wetlands, and that even a mitigation ratio of one-to-one is likely insufficient in most cases. We are concerned that the compensatory mitigation requirements could allow the Regional Boards to permit projects with mitigation ratios of less than one-to-one, which would be inconsistent with the state's no-net-loss policy. We recommend that the SWRCB require a minimum of one-to-one compensatory mitigation whenever mitigation is necessary.	See general response #8.

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99.3	Third, we urge the SWRCB to take another look at the prior converted croplands issue and close a loophole that could allow for unfettered development of wetlands on certain agricultural lands. Part III of this letter discusses these and other requested revisions in greater detail.	See general response #3.
99.4	We appreciate that the proposed modified-three-parameter definition is more protective of California wetlands than the federal definition, although we continue to recommend a more protective one-parameter definition.[footnote] The modification to the federal definition ensures protection of unvegetated wetlands like playas, tidal flats, some river bars, and shallow nonvegetated ponds. As the draft staff report recognizes, these “areas provide the hydrological and ecological functions and beneficial uses that distinguish wetlands from other places,” but may not receive protection through application of the federal definition. Draft Staff Report at 54. The San Francisco Bay Regional Water Quality Control Board “recognizes mudflats, which would fail the three-of-three wetland parameter test since they are unvegetated, as one of the most important wetland types in the San Francisco Bay Region.” Draft Staff Report at 39. The modifications to the federal definition included in the draft policy are essential for California’s efforts to protect these and other unique wetland resources.	See general response #4.

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99.5	The draft policy also clearly identifies which features that meet the wetland definition are waters of the state. We believe the jurisdictional framework will capture the vast majority of ecologically important wetlands, and that it appropriately places the burden of demonstrating that a wetland is not a water of the state on the applicant. The framework will ensure consistency across Regional Boards, provide certainty to applicants, and substantially enhance protections for California wetlands. Although we continue to advocate for a one-parameter approach, we thank SWRCB Members and staff for the effort that went into crafting this framework and the modified-three-parameter definition.	The commenter's support of the wetland definition and jurisdictional framework is noted.
99.6	The permitting procedures are substantially improved from the draft that the SWRCB released in 2016, and they include several elements that are critical for compliance with California's no-net-loss policy. For example, the draft includes a sequencing requirement to ensure that impacts are avoided and minimized before they are mitigated, and requires that the permitted project be the least environmentally damaging practicable alternative ("LEDPA"). The draft also appropriately acknowledges that projects proposing impacts to sensitive wetlands and waters that serve as habitat for rare, threatened, and endangered species deserve enhanced scrutiny. We thank the SWRCB for including these elements in the draft policy.	Comment noted.

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99.7	Section IV(A)(1)(g) of the draft policy exempts certain projects from the alternative analysis requirements. Because a meaningful alternatives analysis is critical for ensuring that the permitted project is the LEDPA, the exemptions to the alternatives analysis requirements must be narrow and clearly defined. Two of the four exemptions are appropriate, as written. We support the exemption for Ecological Restoration and Enhancement Projects (section IV(A)(1)(g)(iii)), and the exemption for projects with temporary impacts (section IV(A)(1)(g)(iv)) is reasonably narrow in light of the exclusion for any project with "impacts to any bog, fen, playa, seep wetland, vernal pool, headwater creek, eelgrass bed, anadromous fish habitat, or habitat for rare, threatened or endangered species."	See general response #1.

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99.8	However, the exemption regarding Water Board certified Corps' General Permits (section IV(A)(1)(g)(i)) is problematic. As written, the exemption is ambiguous and could be interpreted to apply to projects that have substantial impacts to waters of the state outside of federal jurisdiction. In particular, one could interpret the language to mean that a project can qualify for the exemption if the discharges to waters under federal jurisdiction comply with the terms of a Water Board certified Corps' General Permit, even if the project's discharges to waters of the state outside of federal jurisdiction do not comply with the general permit's terms. That outcome is unacceptable, as it would allow projects with significant impacts to avoid conducting an alternatives analysis. To eliminate this problematic ambiguity, we suggest the following revisions: [In text language change suggestions omitted.]	Section IV.A.1.(g)(i) has been revised in response to this comment to indicate that the exemption will only be applied if the entire project would meet the terms and conditions of one or more Water Board certified Corps' General Permit including discharges to waters of the state outside of federal jurisdiction. The permitting authority will verify that the entire project would meet the terms and conditions of the Corps' General Permit(s) if all discharges, including discharges to waters of the state outside of federal jurisdiction, were to waters of the U.S. based on information supplied by the applicant.

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99.9	The exemption for projects conducted in accordance with an approved watershed plan (section IV(A)(1)(g)(ii)) is also of some concern. In our comments on the 2016 draft of this policy (attached), we emphasized that we support watershed planning and believe it may be appropriate to reduce permitting requirements for projects conducted in accordance with an approved watershed plan. However, such permitting streamlining is only appropriate if the requirements for watershed plans are clearly defined and meaningful. While we appreciate that the draft policy includes some additional details about watershed plans, it is missing information that is critical for ensuring Regional Boards only approve meaningful and protective watershed plans. For example, what scale (size) watershed must the plan include? How will cumulative impacts within the watershed be determined and addressed? How will the plan ensure that alternative approaches are analyzed? How will mitigation banks fit into watershed planning efforts? Without this and other information, it is impossible to know whether particular watershed plans will protect wetlands when project-specific alternatives analyses are not conducted. Further, while we support the creation of habitat conservation plans and natural community conservation plans, we are concerned about overreliance on these documents to satisfy the watershed plan requirements because they are focused on the needs of particular species, and	Comment noted. Note that in the 2016 draft Procedures the definition of a watershed plan was revised to more closely align with the Corps' definition of a watershed plan. The rationale for watershed plans is provided in section IV.B.5.c of the Procedures. In general, the required amount of compensatory mitigation is based on a number of factors such as temporal loss, functional loss, restoration difficulty, distance from the impact site, and risk and uncertainty of success. As stated in the Procedures, if a compensatory mitigation plan complies with an approved watershed plan, then the level of certainty that the project will meet its performance measures increases. In light of the lowered risk and uncertainty, generally a lesser amount of compensatory mitigation is appropriate. This provision was included in the Procedures to incentivize applicants to consider watershed plans during the project planning stage. Watershed plans should help to provide useful information, such as an inventory of aquatic resources in the project evaluation area, and help identify watershed needs, including potential compensatory mitigation sites. Watershed plans are developed for a number of different size watersheds and for different purposes; therefore, the Water Boards have not predefined a hydrologic unit that would be appropriate for use with the Procedures. Rather, the Procedures defines the information that would be needed in the watershed plan for it to be approved (section V). The definition of a watershed plan in the Procedures

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	may not account for other benefits associated with wetlands and waterways, including those related to water quality and flood protection.	does not require an analysis of alternative approaches; however, watershed plans developed in compliance with CEQA are required to evaluate alternative project approaches and cumulative impacts. While mitigation banks are not specifically identified in the definition of a watershed plan, it is feasible that mitigation banks could serve as one part of a watershed plan's overall approach to aquatic resource restoration, establishment, enhancement, and preservation within a watershed. Lastly, there are existing plans such as HCPs, NCCPs, and SAMPs that may meet the definition of a watershed plan and may be submitted to the Water Boards for approval to use as a watershed plan. The Procedures were revised to allow for the use of certain HCPs and NCCPs as watershed plans. Any NCCP approved by the California Department of Fish and Wildlife before December 31, 2020, and any regional HCP approved by the United States Fish and Wildlife Service before December 31, 2020, which includes biological goals for aquatic resources, shall be used by the permitting authority as a watershed plan for such aquatic resources, unless the permitting authority determines in writing that the HCP or NCCP does not substantially meet the definition of a watershed plan for such aquatic resources. However, plans that don't meet the above requirements would need to be submitted for approval before project proponents could qualify for the incentives outlined in the Procedures.

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99.10	In light of these problems, the SWRCB should provide additional details regarding the elements that must be included in a watershed plan and modify the language in section IV(A)(1)(g)(ii) to ensure the public has an opportunity to comment on any watershed plan before Regional Board approval: [In text language change suggestions omitted.]	The Procedures have not been revised in response to this comment. The development of watershed plans is independent from the Procedures. The definition of a watershed plan in section V includes a variety of types of plans, many of which include a public noticing and review process. The Water Boards will not approve the use of watershed plans until the Procedures are adopted. In order for an applicant to qualify for the incentives outlined in the Procedures the watershed plan must include the conditions outlined in the definition of a watershed plan (Section V Definitions). Individual watershed plans will be reviewed to ensure that they meet the conditions outlined in the Procedures.
99.11	First, while the draft policy includes a clear framework for determining the level of analysis that is appropriate for each project, it then provides the Regional Boards with unbounded discretion to depart downward and permit a less detailed analysis than the framework prescribes. The draft policy states that "[a]lternatives analyses shall be completed in accordance with the following tiers, unless the permitting authority determines that a lesser level of analysis is appropriate." Draft Policy at IV(A)(1)(h). The clause beginning with "unless" completely undermines the carefully crafted framework, and would allow Regional Boards to permit projects with significant impacts while requiring only minimal analysis. For example,	See general response #1.

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	according to the framework, a project proposing to impact two acres of vernal pools would fall into Tier 3 and would require "an analysis of off-site and on-site alternatives." Draft Policy at IV(A)(1)(h)(i). However, based on the clause beginning with "unless," a Regional Board could ignore the framework and the severity of the impact, and merely require the applicant to comply with Tier 1 and provide a "description of any steps that have been or will be taken to avoid and minimize loss of, or significant adverse impacts to, beneficial uses of waters of the state." See Draft Policy at IV(A)(1)(h)(iii). Such a cursory analysis is never appropriate for a project with significant impacts, and allowing the Regional Boards to depart downward in this manner undermines the SWRCB's efforts to avoid and minimize wetland impacts. Accordingly, we strongly urge the SWRCB to delete the clause "unless the permitting authority determines that a lesser level of analysis is appropriate" from section IV(A)(1)(h) of the draft policy. If the SWRCB is unwilling to delete the problematic clause, at minimum, we request the addition of language to ensure that a full alternatives analysis is required for projects proposing impacts to particularly important and sensitive wetlands and waters. We suggest adding the following sentences to section IV(A)(1)(h): [In text language change suggestions omitted.]	

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99.12	Second, the tiered framework fails to account for the significant degradation of wetlands and waters that can occur through indirect impacts. Indirect impacts include scour caused by culverts, the altering of the wetland's hydrologic regime due to either increased stormwater flow from impervious surfaces or from diversions of stormwater away from the wetland, the impeding of the movement or migration of wetland-related species such as California red-legged frogs or California tiger salamanders, and mortality from bird strikes on newly adjacent buildings. All of these impacts, and others, will significantly affect beneficial uses of waters of the state. Yet the tiered alternatives analysis framework ignores indirect impacts completely. This omission could allow projects with substantial, permanent impacts to move through the permitting process without meaningful consideration of alternatives, and creates uncertainty regarding the level of analysis required for projects that only have indirect impacts. To fix these problems, we recommend adding the following language to section IV(A)(1)(h)(i)-(iii): [In text language change suggestions omitted.]	The Procedures have not been revised in response to this comment. The tiered framework is for determining the appropriate level of detail required in an alternatives analysis. Indirect, or secondary impacts, are typically defined as those that are caused by an action, are later in time, or farther removed in distance, but still reasonably foreseeable, and are therefore difficult to measure. Water Board staff will review and approve alternative analysis documents to ensure that practicable alternatives have been considered and adverse impacts have been avoided and minimized to the extent practicable. As stated in section IV.B.3.a, "[i]n all cases, the alternatives analysis must establish that the proposed project alternative is the LEDPA in light of all potential direct, secondary (indirect), and cumulative impacts on the physical, chemical, and biological elements of the aquatic ecosystem." Hence, once there is an activity that results in the discharge of dredged or fill material to waters of the state, the Water Boards may also regulate activities that could affect the water quality of waters of the state in an Order. Section IV.A.f also requires applicants to describe potential direct and indirect impacts. When necessary, Orders will include conditions that help avoid or minimize potential indirect impacts.

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99.13	We understand that the SWRCB is concerned that it may be difficult to ascertain the geographic extent of indirect impacts. However, Regional Boards could easily account for indirect impacts within the existing tiered framework. Some projects will fall into Tier 3 regardless of the number of acres or linear feet of state waters affected because they impact a bog, fen, playa, seep wetland, vernal pool, headwater creek, eelgrass bed, anadromous fish habitat, or habitat for rare, threatened or endangered species. Because these projects are categorized regardless of the geographic extent of the impact, there is no difficulty in considering both direct and indirect impacts. For other projects, we understand that Regional Boards regularly assess the geographic extent of indirect impacts, and we do not think this analysis would be particularly onerous. For example, a description of the geographic area affected by anticipated changes in hydrology from increased impervious surface should be a pro forma part of any application. The SWRCB could provide a specific list of potential indirect impacts to assist applicants and the Regional Boards with this analysis.	See response to comment #99.12 and general response #1.

Comment Number	Comment	Response
99.14	Third, because the level of analysis required in the tiered framework relates to the geographic extent of the impact, there is a risk that applicants will segment a single project into multiple applications to avoid conducting a detailed alternatives analysis. The draft policy does not clearly include language prohibiting this type of segmentation, leaving open the possibility that applicants could piecemeal projects to avoid conducting the analysis required for Tier 3 or Tier 2 projects. We suggest adding the following language to the end of section IV(A)(1)(h) to prohibit segmentation: [In text language change suggestions omitted.]	The Water Boards consider all impacts to water resources resulting from the whole of the project in accordance with CEQA. The Procedures have been revised to include a definition of "Project."
99.15	To ensure that applicants understand that piecemealing projects is unacceptable, we also recommend adding a clear prohibition on piecemealing in section IV of the draft policy that would apply to all aspects of the procedures.	The Water Boards consider all impacts to water resources resulting from the whole of the project in accordance with CEQA. The Procedures have been revised to include a definition of "Project."
99.16	Finally, at the September 6, 2017 SWRCB meeting, staff suggested limiting application of the presumption regarding the availability of off-site alternatives to wetlands that meet the U.S. Army Corps of Engineers' ("Corps") wetland or special aquatic site definitions, thereby excluding some unvegetated wetlands. We are firmly opposed to this suggestion. Why bother adopting a clear definition of wetlands with a transparent jurisdictional framework, only to deprive some of those jurisdictional wetlands of the protections afforded by state law? Unvegetated wetlands provide many of the same services and functions	See general response #4.

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	of other wetlands and no single wetland can provide all of the functions that the variety of wetlands as a whole can provide. Singling out this group of wetlands for lesser protection is inappropriate. Further, any requirement that Regional Boards defer to the Corps' determination regarding the applicability of the presumption is problematic because the Corps' approach may be a moving target, and requiring deference to unknown future federal standards could substantially and inappropriately reduce state law protections for California wetlands.	
99.17	The draft policy's compensatory mitigation requirements that could allow less than one-to-one mitigation in some circumstances are inconsistent with California's no-net-loss policy and must be strengthened. In particular, the provision in section IV(B)(5)(c) that permits Regional Boards to approve projects with mitigation ratios of less than one-to-one acreage or length of stream reach is inappropriate and will lead to continued wetland losses. Because of the low ecological success rate for mitigation wetlands, it is unreasonable to assume that any applicant could fully replace lost wetland functions through the creation of less wetland acreage than was lost. Further, merely replacing lost wetland functions is inadequate. Executive Order 59-93 establishes that it is the policy of the state to "ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California," and permitting mitigation ratios of less	See general response #8.

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	than one-to-one certainly does not move the state toward a long-term net gain of wetlands.	
99.18	Creating buffers around mitigation wetlands should be a standard practice, and is not a proper basis for reducing mitigation requirements below one-to-one. And while we support multi-benefit projects, trading wetland mitigation for other project benefits is inappropriate and inconsistent with the state's no-net- loss obligations.	Section IV.B.5.c includes buffers as one of a number of considerations for establishing the amount of mitigation required by the permitting authority. As stated in this section, if the mitigation plan provides for management of buffers around the mitigation site, the permitting authority may consider a reduction in the mitigation amount required. The provision of managed buffers lowers the risk that a mitigation project will fail. A minimum of one-to-one will be required, so there will be no loss of wetland acreage. See general response #4.
99.19	We are also concerned that allowing mitigation ratios of less than one-to-one will increase workload for Regional Board staff. Because the draft policy opens the door to the prospect of lowering mitigation requirements, applicants will regularly seek mitigation ratios that are less than one-to-one, and the Regional Boards will feel pressure to allow the reduced mitigation or explain why a higher mitigation ratio is necessary. The allowance of mitigation ratios of less than one-to-one is both under protective of wetlands and counterproductive for Regional Board staff workload. To remedy these problems and comply with the no-net-loss policy, the SWRCB should make the following changes to section IV(B)(5)(c): [In text language change suggestions omitted.]	See general responses #6 and #8.

Comment Number	Comment	Response
99.20	Finally, while we support watershed planning, we are concerned about the language in the draft policy that would permit reduced mitigation requirements for projects that locate mitigation based on an approved watershed plan. See Draft Policy at IV(B)(5)(c). As discussed above, the draft policy does not include sufficient detail to ensure that Water Board approved watershed plans are meaningful and protective. Accordingly, reducing mitigation requirements for projects conducted in accordance with approved watershed plans may result in a net loss of wetland acres and functions and is unacceptable. The SWRCB should provide additional details regarding the elements that must be included in a watershed plan, and modify the language in section IV(B)(5)(c) to ensure the public has an opportunity to comment on any watershed plan before Regional Board approval: [In text language change suggestions omitted.]	The consideration of a lesser amount of compensatory mitigation when projects are planned in accordance with a watershed plan that is approved for use by the Water Board was included to incentivize applicants to consider watershed plans during the project planning stage. Watershed plans should help to provide useful information, such as an inventory of aquatic resources in the project evaluation area, and help identify watershed needs, such as potential compensatory mitigation sites. The Water Boards must require, at a minimum, a compensatory mitigation ratio of one-to-one (see general response #8); however, many factors go into determining the appropriate ratio for compensatory mitigation, including mitigation site location, net loss of aquatic resource surface area, type conversion, risk and uncertainty, and temporal loss, which commonly results in a higher ratio than the baseline one-to-one (see section 6 of the Staff Report for more information). The Water Boards will not approve the use of any watershed plans until the Procedures are adopted. It is expected that interested members of the public would have the opportunity to participate during the development of the watershed plan and/or have the opportunity to comment when the application or draft Order is publicly noticed.

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99.21	In our letters dated August 7, 2012 and August 17, 2016 (attached), we explained that lands designated as prior converted croplands may still include important wetlands, and that the language in the draft policy would make it possible for these wetlands to be destroyed or filled for development without any oversight by the Regional Boards. The current draft continues to exclude prior converted croplands from the procedures, and we remain deeply concerned that the exclusion creates a loophole that could lead to unchecked destruction of ecologically important wetlands. See Draft Policy at IV(D)(2)(a). For example, because these lands are completely excluded from the dredge and fill procedures so long as the land remains in agriculture, a landowner could deep rip a vernal pool to plant an orchard without seeking a permit. Once the vernal pool is gone, the landowner can convert the orchard to a housing subdivision, and because the waters of the state have already been destroyed, there would be no oversight role for the Regional Board. The problem of conversion of ecologically important agricultural lands to development is particularly acute in urban edge areas, and we remain concerned about the role that the draft policy's loophole for prior converted croplands could play in facilitating this destructive trend.	See general response #3.
99.22	Further, we are deeply concerned that the SWRCB is moving forward with this exemption without knowing how much land it is excluding from the dredge and fill procedures. After several inquiries	See general response #3.

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	for information, it is our understanding that the SWRCB does not have any information regarding the extent or geographic location of NRCS certified prior converted croplands in California, and we do not believe such information is publicly available. Without this information, it is impossible to understand the impact of the draft policy's complete exclusion of these ecologically important areas. Until the SWRCB better understands the extent of this serious and unquantified threat, it should proceed with caution and we urge the SWRCB to either eliminate or limit the exemption. Accordingly, we respectfully request that the SWRCB either (1) eliminate the exemption for prior converted croplands, or (2) strengthen the recapture provision for prior converted croplands in the manner explained on pages 11 and 12 of our August 17, 2016 letter.	
99.23	Due to the highly-modified nature of California's waterways, many of the state's remaining wetlands have to be actively irrigated and managed to continue providing habitat values. Additionally, wetland enhancement and restoration efforts add important acres and functions to our portfolio of wetlands. The final policy must support rather than impede efforts to enhance, restore, and manage wetlands and other ecosystems. The Central Valley Joint Venture and Grassland Water District have particular knowledge and expertise regarding wetland restoration, enhancement, and management efforts, and we urge the SWRCB to pay careful attention to the comments submitted by	Comment noted. See responses to comments received from the Central Valley Joint Venture (Letter #20) and the Grasslands Water District (Letter #39).

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	those organizations.	
99.24	However, the draft policy does not require all applicants to submit climate change related information. Instead it merely states that the permitting authority may, "on a case-by-case basis," require "an assessment of the potential impacts associated with climate change related to the proposed project and any proposed compensatory mitigation, and any measures to avoid or minimize those potential impacts." Draft Policy at IV(A)(2)(b). Merely granting the Regional Boards authority to request climate change information is likely to lead to inconsistent consideration and does not appear to conform with State Board Resolution Nos. 2008-0030 and 2017-0012. Information related to sea level rise and changing precipitation patterns, for example, may substantially affect the viability of proposed projects and the success of proposed mitigation, and this critical information should be considered with every application. We are concerned that, unless it is a clear requirement, some Regional Boards will never require submission of climate change information or otherwise ensure it is considered along with each application. Accordingly, we request that the SWRCB delete section IV(A)(2)(b) from the policy, and add the following language in a new section IV(A)(1)(i): [In text language change suggestions omitted.]	See general response #7.

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99.25	To provide additional guidance to applicants and Regional Board staff regarding the suggested contents and level of detail for a climate change assessment, we suggest that the SWRCB either add additional information to the draft staff report, or create a separate guidance document that includes sample climate change assessments that could be provided by the applicant or undertaken by the Regional Board.	See general response #7.
99.26	The long-awaited adoption of this policy will signify completion of Part 1 of the three-part policy described in State Board Resolution No. 2008-0026. Part 2 requires an expansion of the scope of this policy to protect wetlands from all other activities impacting water quality, and Part 3 involves extending the policy's protections to riparian areas. In light of ongoing threats to California's wetlands and riparian areas, it is imperative that the SWRCB begin working on both Part 2 and Part 3. Accordingly, we ask that, in the Resolution adopting this policy, the SWRCB direct staff to begin working on Parts 2 and 3 immediately.	Comment noted. The State Water Board will consider initiating Phase 2 and Phase 3 separate from adoption of the Procedures.

Letter 100: Bay Area Flood Protection Agencies Association

Comment Number	Comment	Response
100.1	Water Board staff assert that reporting quantity of proposed impacts to a thousandth of an acre (0.001) is appropriate to avoid over estimation of impacts related to dredge and fill activities and for conformity of reporting. Demanding accuracy to a thousandth of an acre (less than 44 square feet) is impractical and unnecessary. As an example, when local agencies perform routine maintenance along a creek, a 1000 feet long work area would require estimating the impact width within half an inch.	The rounding of impact quantities in section IV.A.1.f has been revised. The quantity of impacts to waters proposed to receive a discharge of dredged or fill material at each location shall be rounded to at least the nearest one- hundredth (0.01) of an acre. This revision retains the allowance for applicants to round impacts to a smaller quantity (one-thousandth (0.001) of an acre), to more precisely characterize impacts related to dredge or fill activities. This impact measurement is necessary for determining fees, analyzing the level of threat and complexity, and determining the amount of required compensatory mitigation, if applicable.
100.2	Tiering of alternatives analysis requirements may be a useful framework to define appropriate levels of evaluation effort and needed details; however, the tiers should be based solely on permanent impacts. The proposal includes temporary impacts that by definition would result in restoration of affected land cover or habitat conditions upon completion of applicant disturbance, would not provide a meaningful criterion for purposes of defining alternatives analysis level of efforts.	The Procedures have not been revised in response to this comment. Water Board staff will verify permanent and temporary impacts to waters in consultation with the applicant and other permitting agencies considering project site and parameters. Temporary impacts are commonly understood as those which eventually reverse, allowing the affected resource to return to its previous state. Although temporary impacts may be restored, it is still appropriate to consider avoidance and minimization measures for the temporal loss of environmental benefits for a period of time.

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100.3	Buffers that are not classified as waters of the State or wetlands would be beyond the Water Board's jurisdiction. By rule, mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. Specifying mitigation requirements based on factors outside the control of permitting authority would be in appropriate.	The buffer requirement in the Procedures is consistent with the federal requirement, which is one of the primary objectives of the Procedures. Section IV.B.5.c includes buffers as one of a number of considerations for establishing the amount of mitigation required by the permitting authority. As stated in this section, if the mitigation plan provides for management of buffers around the mitigation site, the permitting authority may consider a reduction in the mitigation amount required. The provision of managed buffers lowers the risk that a mitigation project will fail.
100.4	Procedure language should be revised to clarify that the permitting authority is not determining the appropriate type and location of compensatory mitigation; rather, the permitting authority would evaluate the applicant's proposal consistent with regulatory authority and based on criteria outlined in the Procedures.	Per section IV.A.2, the applicant is responsible for preparing a draft compensatory mitigation plan, which the permitting authority then evaluates in accordance with the criteria outlined in the Procedures in section IV.B.5. The permitting authority may require changes to the compensatory mitigation plan prior to approval. In many cases, selecting an appropriate compensatory mitigation type or site will be an iterative process between the applicant and the permitting authority, and involve consultation with several agencies.

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100.5	Water Board staff contend that the ability to adjust mitigation ratios to account for recent intentional degradation of an aquatic resource that reduces the potential and existing functions and conditions is appropriate. Recent human activities pre-dating the applicant's impact should have no bearing on compensatory mitigation.	Insertion of the referenced language in section IV.B.5.c of the Procedures was recommended by stakeholders during informal outreach. The ability to adjust the required mitigation ratio to account for recent intentional degradation of an aquatic resource that reduces the potential and existing functions and conditions is appropriate. Otherwise there could be an incentive to intentionally degrade an aquatic resource in advance of a project so that less compensatory mitigation would be required. When recent anthropogenic degradation occurs wholly independent of the project applicant's activity, a higher mitigation ratio would likely not be appropriate. Corrections or repairs of identified anthropogenic degradations can be proposed as on-site compensatory mitigation for routine maintenance and repair projects.
100.6	The Procedures, staff report, and staff responses to comments remain silent to legal standards that require mitigation must be roughly proportional to the impact and have a general nexus to the degree and type of impact proposed. Only impacts of a proposed project on the existing physical conditions present at the time project environmental review is initiated may be used to determine appropriate mitigation. Potential beneficial uses and impacts caused by historical activities cannot be used to assess mitigation requirements without conflicting with constitutional protections.	The Procedures do not abrogate any applicable constitutional restrictions on imposing compensatory mitigation. See the response to comment #100.5.

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100.7	We recognize that the watershed plan criteria, including watershed profile information, required in the Procedures is not currently met by any existing watershed plan. There is question whether any entity can meet the stringent requirements. Steps to institutionalize watershed planning approaches via the Procedures necessitate clear guidance to ensure consistent, predictable application of compensatory mitigation requirements across the State.	The use of a watershed plan is not a requirement in the Procedures but rather an incentive for applicants to apply the watershed approach through the use of watershed plans when planning projects that will impact waters of the state. There are existing plans such as HCPs, NCCPs, and SAMPs that may meet the definition of a watershed plan and may be submitted to the Water Boards for approval to use as a watershed plan, but the Water Boards will not approve any watershed plans until the Procedures are adopted. The Procedures create incentives to develop watershed plans that address all aquatic resources, including wetlands, where such plans do not already exist. It should be noted that applying a watershed approach pursuant to the Procedures is not contingent on the availability of such plans. According to the Procedures, applying a watershed approach means “evaluating the environmental effects of a proposed project and making decisions that support the sustainability or improvement of aquatic resources in the watershed (see Section V Definitions).” Lacking a watershed plan, the applicant would need to obtain information from other sources for the project evaluation area on the “watershed profile,” i.e., the abundance, diversity and condition of aquatic resources. The scope and detail of this information is expected to be commensurate with the “magnitude of impact associated with the proposed project” (see section IV.A.2.b.i).

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100.8	Requiring applicants to complete a watershed profile and evaluate an ecologically meaningful unit is not reasonable. “Ecologically meaningful unit” is far too subjective and invites inconsistency contrary to the Water Boards goals.	The Procedures were not revised in response to this comment. Due to the variety of project sizes that are certified through the water quality certification program, it would be inappropriate to define one standard ‘ecologically meaningful unit’ in an attempt to cover the scope of all individual project areas. Projects can range in size from replacing a small culvert, therefore only needing a small watershed profile, or renewable transmission lines that could span many miles. State Water Board recommends using the same evaluation area used when evaluating the project under CEQA. Best professional judgment should be applied when determining a project evaluation area. In addition, a basic watershed profile for the watershed can be easily generated on the EcoAtlas website (www.ecoatlas.org), which may be sufficient for smaller projects. Local watershed group/resource agencies may be able to provide further information. The use of a watershed approach is consistent with the Corps’ regulatory program. The federal compensatory mitigation rule (33 C.F.R. part 332) requires the Corps to apply a watershed approach for compensatory mitigation decisions, which relies on information provided by the applicant or other sources. Thus, information and assessment of the abundance, type, and condition of aquatic resources in the project evaluation area is currently key to the Corps’ application of the watershed approach and would also satisfy information needs under the Procedures.

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100.9	Further, implementation of compensatory mitigation Strategy 1 would necessitate extensive advance efforts, including thorough environmental review, which could take years to implement with no guarantee of meeting subjective and poorly defined requirements left to permitting authority discretion. Without binding permitting authorities to decisions made early in the planning process, no amount of pre-application consultation could guarantee consistent and predictable results.	As the commenter noted, Strategy 1 (see section IV.B.5.b of the proposed Procedures) is only available where a watershed plan already exists that has been approved for use by the permitting authority. However, if a watershed plan is developed by project proponents to address compensatory mitigation requirements, then the federal and state agencies that are required to approve mitigation proposals are commonly involved in plan review. There are examples of this currently where the Water Boards have been involved in the review of mitigation bank and in-lieu fee proposals, advanced mitigation proposals, as well as plans such as HCPs, NCCPs and SAMPs. Binding agency agreements are usually not part of the plan implementation process. However, an agency could approve a mitigation plan designed as an integral part of the watershed plan, such as an in-lieu fee proposal for aquatic resources, or an HCP/NCCP for wildlife species.
100.10	In addition, approved Habitat Conservation Plans and Natural Community Conservation Plans that incorporate a watershed approach should be clearly recognized as acceptable Watershed Plans for the proposed Procedures.	The Procedures have not been revised in response to this comment. The Procedures state that the Water Boards may approve the use of HCP and NCCPs as watershed plans. Refer to the definition of a watershed plan in section V.
100.11	As with public agencies across the state, BAFPAA [Bay Area Flood Protection Agencies Association] members have constraints on establishing long term funding arrangements. Public agencies are enduring institutions with constitutionally	Comment noted. A financial security is an optional requirement, and is not mandatory in all cases. Financial securities may be necessary to provide that there are sufficient funds to correct or replace unsuccessful mitigation if the responsible party fails

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	prescribed tax revenues, so for those agencies with a sufficient credit rating, they at least should be allowed to use any financial mechanisms for which California law provides. We support incorporation of maximum flexibility in defining financial security mechanisms that would satisfy long-term funding arrangements for public entities, while ensuring predictable permitting authority determinations.	to do so. A financial security may not be necessary where there is a high level of confidence that mitigation will be provided and maintained. For example, a letter of commitment may be an alternate mechanism to establish such confidence from a government agency.
100.12	The procedures should also clearly state that endowments are not required of a public agency permit applicant.	See response to comment #100.11.
100.13	BAFPAA appreciates the Water Board's efforts to improve regulatory consistency, strengthen regulatory effectiveness, and streamline the permit application process. However, key features and requirements may miss the mark or remain too ambiguous to foster the Water Board's intended goals. Careful and thorough consideration of flood protection agency concerns is warranted to ensure their critical public safety missions are not compromised by serious impacts from additional regulatory burdens.	For the reasons discussed in section 6.6 of the Staff Report, the Procedures will clarify and streamline existing Clean Water Act section 401 certification procedures in California, thereby reducing regulatory redundancy and increasing the consistency of section 401 authorizations, while better protecting California's aquatic resources. Overall, regulatory certainty will be increased through consistent regulatory practices across all Regional Water Boards. Consistent regulatory practices will reduce procedural complexity in the administration of the state and federal regulatory programs. Most of the requirements listed in the Procedures reflect current practice, although they are not applied consistently across the Boards. See comments 100.1 through 100.12 for specific response to the key features the commenter is concerned about.

Letter 101: California Water Alliance

Comment Number	Comment	Response
101.1	While "wetlands" are by nature inclusive of waters of the state, there's no constitutional or legislative grant of authority that justifies the Board's new definition of "wetlands" to make the term inclusive of lands that are permanently or ephemerally dry, those covered in vegetation or bare of such vegetation, or those surfaced in or without a soil covering, provided they do not already fall within the scope of the existing, preemptive and broadly recognized federal wetlands definition.	EPA promulgated federal regulations defining wetlands for only the Clean Water Act. (33 C.F.R. § 328.3.) This federal regulation does not preempt the Water Boards from adopting a wetland definition interpreting the scope of waters of the state as set forth in the Water Code. A number of other state and federal agencies use a different wetland definition from the section 404 program. Appendix B of the Technical Advisory Team memorandum no. 2 sets forth different wetland definitions used by various agencies and states, including states that have adopted the Clean Water Act definition of wetlands, states that have modified the definition to include special recognition of selected wetland types, and states that have opted to adopt a distinct wetlands definition. No special constitutional or legislative grant of authority is necessary for the Water Boards to interpret the scope of waters of the state as defined in Water Code, section 13050(e).
101.2	The federal wetlands definition and court precedents already include under CWA wetlands that are adjacent to or have a demonstrable nexus with or to state waters, including those waters that are both navigable and those that are not (itself a regulatory overreach based on misinterpretation of clear language of federal law). The Board's proposed definition further annexes to its jurisdiction lands and waters clearly not contemplated	The Porter-Cologne Water Quality Control Act defines waters of the state broadly. "'Waters of the state' means any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code,§ 13050(e).) Waters of the state is a more inclusive term than waters of the United States because waters of the state are not subject to the jurisdictional limitations of the Clean Water Act. Interpretations of the term "waters of the United States" have evolved over the years,

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	by either Congress in passing the CWA or the framers of California's Constitution and the California Water Code.	including expansions and contractions, but the term "waters of the United States" has always been a subset of waters of the state. California Code of Regulations, title 23, section 3831(w) states that "[a]ll waters of the United States are also 'waters of the state.'" This regulation was adopted before Supreme Court decisions such as *Rapanos* and *SWANCC* added limitations to what could be considered a water of the U.S. Therefore, the regulation reflects an intention by the Water Boards to include a broad interpretation of waters of the U.S. into the definition of waters of the state. Unlike the Clean Water Act, the jurisdictional scope of the Porter-Cologne Water Quality Control Act does not turn on determinations of navigability or nexus to navigable waters because the authority to regulate state waters is not predicated on the ability to regulate interstate commerce.
101.3	The Board's claim that "There is no single accepted definition of wetlands at the state level" ignores the presence of an established federal definition of wetlands promulgated by both Congress in the CWA and by the U.S. Environmental Protection Agency. Numerous court precedents back both preemptive federal law and regulatory interpretation in its preferred status over state regulations, long accepted by every other U.S. state as the proper legal definition of "wetlands" for regulatory purposes. Interpretation by a state regulator beyond Congress's language is therefore unconstitutional.	EPA promulgated federal regulations defining wetlands for only the Clean Water Act. (33 C.F.R. § 328.3.) A number of other state and federal agencies use a different wetland definition from the section 404 program. Appendix B of the Technical Advisory Team memorandum no. 2 sets forth different wetland definitions used by various agencies and states, including states that have adopted the Clean Water Act definition of wetlands, states that have modified the definition to include special recognition of selected wetland types, and states that have opted to adopt a distinct wetlands definition. There is no court precedent holding that the federal definition of wetlands for the purposes of the Clean Water Act

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		preempts a state from interpreting the scope of waters of the state under state law.
101.4	Creating a new standard through regulatory definition divorced from authorizing legislation invites long, costly and uncertain litigation of California's definition and the Board's authority to legislate through administrative regulatory processes rather than through legislation.	The wetland definition is consistent with the broad definition of waters of the state that is set forth in the Porter-Cologne Water Quality Control Act. See also general response #9.
101.5	Resulting delays and discrepancies that will emerge as a result of court action in response to the Board's proposal are in direct conflict with the Board's intent as it will undoubtedly impede and delay necessary actions necessary to protect critical wetlands and waterways.	Comment noted.
101.6	The Board's definition and procedures arbitrarily and capriciously controvert established Supreme Court legal decisions regarding the CWA pertaining to state authority over lands both pristine and used for various beneficial purposes by the people and industries of the State of California, including lands that are neither wetlands in themselves, nor are a nexus to state waters, whether navigable or non-navigable.	See response to comment #101.2. The Procedures do not alter the scope of the Clean Water Act or Supreme Court decisions interpreting the scope of the Clean Water Act. Unlike the Clean Water Act, the jurisdictional scope of the Porter-Cologne Water Quality Control Act does not turn on determinations of navigability or nexus to navigable waters because the authority to regulate state waters is not predicated on the ability to regulate interstate commerce.
101.7	The Board's attempt to make new rules in anticipation of changes to federal law that it might deem unacceptable or arbitrary is a radical departure from the Board's historical reliance on federal CWA protections for its authority to regulate so as to prevent harm to state waters resulting	The Procedures have not been developed in anticipation of changes to federal law. CEQA scoping for the Procedures was initiated in 2007. As set forth in the Project Need section of the Staff Report, the Procedures have a number of objectives, only one of which is related to limitations

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	from dredging or fill discharges operations.	put on the scope of the Clean Water Act. The Water Boards have a well-established history of regulating the discharge of dredge or fill material to non-federal waters of the state. For example, State Water Board Order 2004-0004-DWQ, which has been in effect for the last 14 years, sets forth general waste discharge requirements for dredged or fill discharges to waters deemed by the Army Corps to be outside of federal jurisdiction.
101.8	Overreach Will Cause Harm . The rule-making is detrimental to public and private interests seeking to preserve lands and waters of the state, those who must alter lands in order to protect the public's safety and prevent harm to property, and those who manage lands and waters to ensure the reliability, continuity and safety of California's drinking water supplies, among other affected parties too numerous to enumerate.	The Procedures are not intended to expand jurisdiction over waters of the state, but rather to bring consistency across the boards by adopting a clear and consistent set of requirements that will bring consistency to the Water Boards and apply to all waters of the state. See general response #2 for information on revisions made to the Procedures that will offer regulatory relief for the type of facilities to which the commenter may be referring.
101.9	Further, the Board's proposed rule, inherently limited to dredge and fill discharges on land, is a thinly disguised overreach to establish a new definition that will permit and carry regulatory authority of the Board far beyond either dredging or fill practices, one that will establish the Board's authority to regulate unrelated and historical land-use practices, including development, cultivation, husbandry, environmental preservation, stewardship, conservation, endangered species protection and recreational uses.	See general response #9.

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101.10	Inadequate and Improper Justification. The Board insists that justification for the new rule's definition and prescriptive procedures stem in part from situations and needs entirely within the power of Board to adjudicate through the present span of its own existing management control, to wit: "inconsistency across the Water Boards in requirements for discharges of dredged or fill material into waters of the state , including wetlands." Rather than conduct the Board's own business and bring order to the various regional water quality control boards under its authority and direction, it instead would reach beyond its own organization and apply new standards, definitions and procedures to the people, lands and waters of the entire state.	The Procedures bring consistency and direction across the Water Boards by providing a clear set of requirements for the review and approval of applications. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews, although not consistently. The Water Boards have undertaken an effort to provide a common organizational structure for Orders to promote consistency and clarity in regulating discharges of dredged or fill material to waters of the state. In addition, staff are working on a standardized statewide application form that will ensure that information provided by project proponents is accurate and consistent. Finally, as part of the implementation of the Procedures, Water Board staff that process discharge of dredged or fill material applications will be trained on a number of different elements included in the Procedures.
101.11	The Board concludes its justification of a new definition and procedures by saying "current regulations have not been adequate to prevent losses in the quantity and quality of wetlands in California, where there have been especially profound historical losses of wetlands." While admitting failure under existing authorities, the Board also fails to demonstrate how expanding its authority and jurisdiction will provide for success in stemming losses and improving quality of wetlands under the existing "wetlands" term definition.	The Procedures are not intended to expand jurisdiction over wetland waters of the state, but rather bring consistency across the boards by adopting a wetland definition that represents all the various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services. The determination of whether a feature meets the wetland definition is separate from the determination as to whether that wetland is a water of the state. In an attempt to avoid the regulation of features that may meet the wetland definition, but have not been regulated in the past by the Water Boards, a jurisdictional framework has been provided for

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		determining when a wetland is a water of the state in the revised Procedures.
101.12	Further, despite its overly broad assertion, the Board provides no causal evidence of relationship between any claimed harm to wetlands in either quality or quantity and present dredging or fill practices, a further demonstration that the new definition of the term is intended to apply more broadly than to simple dredging and fill discharge operations. Its assertion without proof of causality is devoid of hard evidence that would warrant the extreme step of annexing into its jurisdiction and control public and private lands beyond the Supreme Court-limited definition and the Clean Water Act's authority conferred by Congress concerning wetlands or an existing nexus to wetlands.	As set forth in section I, the wetland definition and delineation procedures would apply to all Water Board programs, not just to the discharges of dredge or fill material. Section IV applies to only the discharge of dredge or fill material. Section 5 of the Staff Report contains detailed information regarding the effect of dredge and fill activities on waters of the state, and wetlands in particular. For example, section 5.2 includes a summary of temporary and permanent impacts to various waters of the state in previous years.
101.13	Sufficiency and Self-Serving. The Board reasons, "In accordance with Executive Order W-59-93 the Procedures ensure that the Water Boards' regulation of dredged or fill activities will be conducted in a manner "to ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values..." (Emphasis added) at the same time as it seeks to include within its spacious definition of "wetlands" many lands that are historically and demonstrably not wetlands subject to its authority and purposes.	The wetland definition includes all the various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services. For more information regarding the how the wetland definition was developed, please see section 6.3 of the Staff Report and the Technical Advisory Team memoranda. The definition has been found to be scientifically sound by external peer reviewers selected independently through an established process by CalEPA.

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101.14	Changing the "wetlands" definition is, in the Board's convoluted rationale, part and parcel with accomplishing its stated goal for the regulatory excursion, "The Water Boards are committed to increasing the quantity, quality, and diversity of wetlands that qualify as waters of the state." (Emphasis added) Ipso facto, promulgate this proposed new rule, and the state's wetlands by fiat will include and encompass far more lands than those previously counted as wetlands. Can the Board's justification to the California Legislature to acquire additional resources in personnel, budget and activities to manage the vastly expanded inventory of wetlands lag far behind, and should our state be penalized through a definition to expand the scope of a state agency?	The Procedures are not intended to expand jurisdiction over wetland waters of the state, but rather bring consistency across the boards by adopting a wetland definition that represents all the various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services. The determination of whether a feature meets the wetland definition is separate from the determination as to whether that wetland is a water of the state. In an attempt to avoid the regulation of features that may meet the wetland definition, but have not been regulated in the past by the Water Boards, a jurisdictional framework has been provided for determining when a wetland is a water of the state in the revised Procedures. See general response #4.
101.15	Without substantiation, the Board claims, "The wetland definition… reflects current scientific understanding of the formation and functioning of wetlands." To the contrary, the overwhelming consensus of current science is to exclude from classification as wetlands any lands that do not exhibit the characteristics and perform the ecological functions of wetlands, including permanently and predominantly dry lands, soilless lands of rock and gravel not adjacent or part of a watercourse tract, former wetlands naturally or artificially cut off from adjacent watercourses, including but not limited to those severed by dams; levees; dikes; natural landslides; fill or highway, railway and other transport	Use of the proposed definition for wetland identification and delineation requires careful consideration of hydrology, substrate and vegetation in every case. In cases where the hydrology and substrate criteria are present, but vegetation is absent, an analysis must be conducted to determine if that absence is a natural consequence of the hydrologic and substrate conditions and, if it is not, if the expected vegetation would be predominantly hydrophytic or not. Mere absence of vegetation does not lead to an automatic conclusion that an area is not wetland. The Corps definition refers to "saturated soil

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	rights-of- way.	conditions", whereas the Water Board definition refers to saturated substrate leading to "anaerobic conditions in the upper substrate" which is a more inclusive term. However, both of these descriptions are functionally equivalent because both define conditions that would lead to dominance of hydrophytes, if the site is vegetated. The term "Upper Substrate" is defined in TAT Memo 2: "Upper substrate is the portion of substrate extending downward from the substrate surface to a depth of 50 centimeters (20 inches). In non-vegetated as well as vegetated wetlands, this is the portion of substrate within which relevant anaerobic chemical conditions develop." "Relevant anaerobic chemical conditions" would not be expected to occur in "permanently and predominantly dry lands" on the surface of the substrate, and thus would not be recognized as being part of the wetland substrate. Finally, it is not expected that the features described in this comment would qualify as a wetland under the Procedures' wetland definition in section II due to the lack of recurrent or continuous hydrology under normal circumstances. Also see general responses #2 and #4.
101.16	The scientific exclusion from classification as wetlands of lands such as these recognizes that landforms transition over time in the face of both	The technical wetland definition does not expand the Water Boards' jurisdiction over waters of the state, which is broad. Rather, the Procedures are intended

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	natural and human-caused change, including transformation already under the Board's purview to review and permit as well as those beyond its authority; the Board's definition would encompass without distinction entire watersheds of non-wetland lands, other terrain far from state waters, and lands within state or federal flood-control project areas.	to increase consistency across the Water Boards by providing a framework for determining whether features that meet the technical wetland definition are a water of the state. The wetland definition requires careful consideration of hydrology, substrate and vegetation in every case. See also response to comment #101.15.
101.17	Without distinction or exception, the Board's definition includes as wetlands, " An area is wetland if , under normal circumstances…, the area lacks vegetation." By that overly broad definition, the entire massif of the Sierra-Cascades mountain ranges above tree line would qualify as wetlands, as would virtually all the desert lands of the state, encompassing millions of acres of non-wetlands regulatory area converted into wetlands. So would fallow agricultural fields, even graded and paved lands Developers preparing land for residential or commercial structures would, by virtue of their activities, convert non-wetlands into wetlands simply through earthmoving and grading operations necessary for construction.	Use of the proposed definition for wetland identification and delineation requires careful consideration of hydrology, substrate and vegetation in every case. The comment omits critical components of the technical definition. The lack of vegetation does not, by itself, establish an area as wetland.
101.18	Even if the Board's proposed definition could pass constitutional muster or be properly justified, such overreach and incursion of the Board's authority into every aspect of public life and economic activity is simply breathtaking, inappropriate and unwarranted. Such a broad assumption of powers should only be exercised by the California Legislature. That body has not taken such action, and it is doubtful that it would; to the contrary, the	The assertions about the breadth of the Procedures are based on a misunderstanding of the technical definition. See response to comment 101.17. The Porter-Cologne Water Quality Act establishes the Water Boards' jurisdiction. This act was adopted by, and may be amended by, the California Legislature.

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	Board's proposal invites scrutiny by legislators who may reasonably pass legislation to roll back the Board's new authority, even if the Board finalizes its rule as presently proposed.	
101.19	Conclusion. The Board, and by extension the State of California, is engaged in a wholesale regulatory reclassification without proper justification of millions of acres of public and private lands neither legally nor scientifically classifiable as wetlands, including lands of California owned in the public trust by the federal government.	See general responses #4 and #9. See also information about the Technical Advisory Committee and peer review in section 4 of the Staff Report as well as wetland-specific information in section 5 of the Staff Report.
101.20	This thinly disguised land grab made in the name of preserving the state's waters will result in long, costly and wasteful litigation between the state and federal government and with private landowners caught in a regulatory squeeze for the convenience and benefit of the Board.	See response to comment #101.14.
101.21	CalWA believes that the proposed rule will not physically protect, preserve or restore true wetlands and waterways of California threatened by dredging and fill discharge operations. Expanding the definition of a waterway does not a waterway make. This "new math" does not serve well the environment of California in any real sense; rather, it is a means to the end of inventing success and faux accomplishments for an agency that has failed, for lack of exercise adequate and sufficient control over its own regional water boards and for whatever other reasons, to achieve its directive of protecting and preserving the waters of the State of California it is charged to oversee.	Comment noted.

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101.22	The proposed definition and procedures of this rule should be withdrawn, and a broad and inclusive commission or conference of stakeholders and environmental scientists representing all the regulated users and the state's aquatic environment. should be convened to inform the Board's staff on new directions that remedy the defects of the proposed rule and its poorly conceived definition of "wetlands."	As described in the Staff Report (Section 4: Introduction) State Water Board staff has conducted extensive stakeholder outreach since 2008, and has held numerous workshops to discuss the Procedures. The State Water Board released the draft Procedures for public review and comment twice: an initial draft Procedures was released on June 17, 2016, for a 62 day public review and comment period, and a revised version of the Procedures was released on July 21, 2017, for a 59 day public review and comment period. Staff conducted multiple public workshops during each public review and comment period, and the State Water Board held hearings to receive public comments on the draft Procedures. In response to the commenter's concern regarding the technical wetland definition, see general response #4.

Letter 102: County of San Diego

Comment Number	Comment	Response
102.1	On August 17, 2016 the County submitted comments on Project (Attachment A). The County would like to reiterate that these comments remain in effect, and would like to submit additional comments for consideration. Please note that none of these comments should be construed as County support for this Project.	For responses to comments that the commenter submitted on the 2016 draft Procedures, refer to "Response to Comments on State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State, Version 1," released on July 21, 2017. For response to comments received on the 2017 draft Procedures see below.
102.2	The County requests that when quantifying an impact, the acreage impacted be rounded to the nearest hundredth of an acres rather than thousandth (Preliminary Draft lines - 151-152). This practice is more consistent with industry standards.	The rounding of impact quantities in section IV.A.1.f has been revised. The quantity of impacts to waters proposed to receive a discharge of dredged or fill material at each location shall be rounded to at least the nearest one-hundredth (0.01) of an acre. This revision retains the allowance for applicants to round impacts to a smaller quantity (one-thousandth (0.001) of an acre), to more precisely characterize impacts related to dredge or fill activities. This impact measurement is necessary for determining fees, analyzing the level of threat and complexity, and determining the amount of required compensatory mitigation, if applicable.
102.3	The County requests that the State Water Board revise and simplify the language in the alternatives analysis section as it is very confusing (Preliminary Draft - lines 158-198)	See general response #1.

Letter 103: Defenders of Wildlife, California Desert Representative, and California Native Plant Society

Comment Number	Comment	Response
103.1	We urge you to adopt the recently released State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State. Federal rollbacks threaten to weaken related protections for critical wetlands and streambeds throughout California's desert regions. Adoption of the dredge and fill procedures proposed by State Water Resources Control Board's ("Board") is essential for safeguarding these treasured ecological resources.	The commenter's request for adoption is noted.
103.2	As the Board has recognized, federal protections for streamside riparian and wetland habitat are currently inadequate, and the Regional Boards' existing regulatory approach is failing to halt the destruction and degradation of California's wetlands. Without swift action by the Board, we fear a continuing loss of the desert waters that make our state unique. By adopting the proposed state wetland definition and procedures for dredged material/fill discharges into waters of the state without further delay, the Board will make clear that desert wetlands and waterways in California are entitled to protection, and that impacts to these resources must be avoided and/or minimized.	The commenter's support for adoption is noted.
103.3	Before adopting the proposed procedures, the Board should make a few key changes to ensure they adequately protect the California Desert. First, a meaningful assessment of alternatives is essential for ensuring that impacts are avoided	See general response #1.

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	and/or minimized, and the procedures' alternatives analysis requirements suffer from a fatal flaw. While the procedures provide a clear framework for determining the level of effort required for the alternatives analysis, they undermine that framework by giving the Regional Boards an unbounded discretion to allow a less detailed analysis.	
103.4	Second, we are deeply concerned that the proposed procedures would allow Regional Boards to permit projects with mitigation ratios of less than one-to-one. Mitigation designs involving restoration or creation of wetlands/riparian habitat in the California Desert are unlikely to function as well as undisturbed, natural wetlands. Utilizing mitigation ratios of less than one-to- one would likely precipitate a net loss in state wetland acreage and function. To avoid continued wetland losses, we respectfully request that you modify the proposed procedures to require a 1:1 or greater mitigation ratio in permitting endeavors.	See general response #8.
103.5	With federal protections for desert streams, springs and wetlands in California potentially on the chopping block, the Board must act quickly. Please adopt the State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State without further delay to ensure these ecological treasures will continue to exist for future generations.	The commenter's request for adoption is noted.

Letter 104: Gallaway Enterprises

Comment Number	Comment	Response
104.1	The proposed Regulations outlined in the July 21, 2017 Final Draft create a duplicative and costly process that will result in serious consideration by private citizens and project proponents evaluating the timeline and cost for compliance with the new Regulations versus non- compliance. In our experience most private project proponents want to completely comply with all State and Federal regulations; however there is a very real danger of creating a regulatory process so subjective, time-consuming, and costly that the normal regulated public (non-federal or state funded applicants) will choose noncompliance, which will inherently undermine the goals of the State Water Board. The new Regulations create uncertainty in an otherwise uncertain system of project entitlement, making the risk of compliance intolerable.	For the reasons discussed in section 6.6 of the Staff Report, the Procedures will clarify and streamline existing Clean Water Act section 401 certification procedures in California, thereby reducing regulatory redundancy and increasing the consistency of section 401 authorizations, while better protecting California's aquatic resources. Overall, regulatory certainty will be increased through consistent regulatory practices across all Regional Water Boards. Consistent regulatory practices will reduce procedural complexity in the administration of the state and federal regulatory programs. Most of the requirements listed in the Procedures reflect current practice, although they are not applied consistently across the Boards. For the reasons discussed in section 11.3 of the Staff Report, this requirement is not expected to add to the current cost of compliance.
104.2	The Regulations lack the ability for any reasonable person, let alone a professional, to predict cost, schedule, and ultimately project success. We recommend implementation of the new Regulations as a stop gap policy to protect non-federal waters only.	As explained in Section 1 "Economic Considerations" of the Staff Report, the Procedures are not expected to add additional regulatory burdens and costs. As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare

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		materials ahead of their initial submittal thereby reducing the number of information requests and time spent waiting through the application review process. The Procedures were not revised in response to this comment. The discharge of dredged or fill material to non- federal wetlands is already regulated by waste discharge requirements. Applying separate permitting rules and wetland definitions for federal and non-federal waters and wetlands would add undue complexity and needless cost to the Water Boards' dredge and fill program, and could result in higher permitting fees. In addition, applicants would be faced with a more complex permitting and wetland delineation process, adding time to project schedules, thereby increasing project costs.
104.3	There is no need for a California only definition that differs from the current federal definition. Presumably, the change in the definition between the federal and proposed State definition have to do with the fact that some wetland features such as mudflats and playas don't have a dominance of hydrophytic vegetation. The arid west supplement, which does not alter the federal definition of a WOTUS but rather provides localized guidance on determining jurisdiction addresses this issue. Further, the State definition should not differ from the federal definition to capture a few habitat types that are fairly easy to recognize and in so doing create inconsistency between the Federal and State permitting processes. Eliminate the State only	See general response #4.

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	definition and use the federal definition including the arid west supplement for guidance on address areas such as mudflats.	
104.4	2a. Greater clarity with regards to specific features the State Water Board is trying to protect is needed. There are very few places in this great State that aren't influenced, created, modified, or otherwise altered by "human activity". The term human activity is vague and should be removed.	See general response #2.
104.5	Again, the new Regulations should be implemented in a manner that protects non-federal wetlands rather than re-regulating features already covered and protected by Federal law.	See response to comment #104.2 (above).
104.6	2b.The term "relatively permanent" has no definition thus is subject to misinterpretation and inconsistent interpretation by the public and regulators alike. We suggest using the primary function of a feature to determine whether it qualifies as a waters of the State rather than its relative permanence,	See general response #2.
104.7	including clear exemptions regardless of the size of a feature, for agricultural tailwater ponds, stormwater ponds, recirculation/recharge ponds, ponds created with an artificial liner, and stock watering ponds. We don't believe it is the intent of the State to require private citizens and public municipalities to pursue permits to operate, maintain, and manage existing facilities that provide critical infrastructure to farming operations or provide multiple benefits to communities. If it is the intent of the State to regulate agriculture ponds used primarily for water recharge, recirculation,	Section IV.D of the Procedures and section 6.8 of the Staff Report identify areas and activities that are exempt from complying with these specific Procedures. Examples of activities include, but are not limited to, normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; maintaining or reconstructing structures that are currently serviceable; and constructing temporary sedimentation basins for construction. These areas and activities are not exempt as waters

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	tailwater storage, and watering livestock than please be unequivocal in your intent.	of the state and could be regulated under another program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures.
104.8	2c. The hierarchy in the draft staff report (July 21, 2017, Section 6.4, and Figure 3) for determining which features are regulated and require compliance with the Regulations indicate that there are no exemptions. The term, "relatively permanent" creates exclusions to the exemptions. Furthermore, although the Regulations adopt the CWA(f) exemptions and other exemptions identified in regulatory guidance letters the hierarchy in the staff report indicate that, in reality, there are very few exempt features and fewer exempt activities. Clarification and/or removal of ambiguous terms like, "relatively permanent" and "human activity" and "natural landscape" are needed to streamline any proposed regulatory process to create a reasonably predictable process.	Figure 3 in the Staff Report is an informational flowchart for determining if a wetland is a water of the state. Section IV.D of the Procedures identifies areas and activities that are exempt from complying with these specific Procedures. These areas and activities are not exempt as waters of the state and could be regulated under another program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures. Also see general response #2.
104.9	2d. We recommend removing 4c entirely from the new Regulations as it is so ambiguous that it is cause for delay and uncertainty.	See general response #2.

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104.10	It is not uncommon for applicants to wait 9-12 months just to receive a preliminary JD from the Corps. Thus, in effect, the requirement is subjecting applicants to the processing priority established by the Corps, immediately resulting in considerable delays. The State application should be deemed complete with a draft aquatic resources delineation report and in the cases wherein a JD is not needed by the Corps the State permitting process should not be held up. Rather in cases wherein a federal permit is not needed, a JD will not be issued, or the activity is authorized as non- reporting under an existing nationwide permit the State Board should be competent enough to approve the delineation without the Corps, thus streamlining the State regulatory process for minor projects.	The Procedures were revised to clarify that the permitting authority shall rely on any final aquatic resource report verified by the Corps to determine the boundaries of any wetlands within the waters of the U.S. (sections III, IV.A.1, and IV.B.2), including reports verified per Corps RGL 16- 01. For projects in which only waters of the state outside of federal jurisdiction are present, the Procedures require a delineation of those waters including wetlands delineated as described in section III of the Procedures, and not a Corps-issued jurisdictional determination. (Section IV.A.1.c.)
104.11	4a) The Water Boards should not require alternatives analysis above and beyond current regulations required by CEQA and the EPAs 404(b)(l) Guidelines. The new Regulations appear to provide a path for the Water Board to contradict a LEDPA determination by the EPA and Corps again creating an uncertain and unpredictable path for achieving compliance. Rather than creating an entirely new regulatory process, the Water Board should participate fully in the current process. By design, achieving compliance with the 404(b)(l) Guidelines is a very rigorous, costly, and time consuming process. The cost for completing the analysis is primarily due to demonstrating the LEDPA through the review of on and off-site alternatives analysis. Based on our experience the	See general response #1.

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	cost and processing delays are primarily attributed to regulator requests for more information, additional alternatives, requests for financial calculations, demonstrating need for aspects of the projects, and studies that often have little to do with minimizing impacts. Unqualified regulators become defacto planners, site designers, and engineers. Individual permit applications are not deemed complete until the 404(b)(1) Guidelines are satisfied.	
104.12	Based on the list of potential case-by-case studies that could be requested by regulators such as analysis of project effects on climate change, conditional assessments, and watershed profile evaluations, combined with the efforts to comply with a 404(b)(l) compliant alternatives analysis as required by Tier 2 and 3 the cost and timeframes would be similar if not higher. Due to the low threshold of 0.2 acres or any quantity of impacts to a specific habitat types, minor impacts would be forced to undergo significant cost and delay.	See general responses #1 and #7.
104.13	We highly recommend participation in the existing EPA 404(b)(l) process and not making changes to the federal impact thresholds for when an alternative analysis is needed.	See general response #1.
104.14	While we appreciate the State Boards desire to protect isolated vernal pools, serious consideration needs to be made regarding the distinction between small man- made wetlands, puddles, and temporary wetlands creating from construction activities from naturally occurring vernal pools. If both are treated equally under the new Regulations	See general responses #2 and #4.

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	than it undermines the perception regarding the importance of vernal pools, again creating a situation where compliance is so difficult that non-compliance seems a better solution. Most landowners don't have the luxury of waiting years for a permit and conducting studies at ad nauseamm.	
104.15	The low thresholds outlined in the Staff report and as described in Tier 1-3 reduce the effectiveness of the nationwide permit process and create unrealistic regulatory burdens on projects with minor to ridiculously minor impacts. For example, impact to a single vernal pool of 0.001 acres would trigger an on and off-site 404(b)(1) complaint alternatives analysis as proposed in the new Regulations. In another example of a real project that we are currently working on, installation of 100 cubic yards of rock slope protection into an anadromous stream would trigger a full on and off-site alternatives analysis. In both cases alternatives analysis are not required to secure federal permits, thus the State Board has created a totally separate and time consuming permit process for impacts to regulated waters already protected by a federal law and a rigorous permitting process.	See general response #1. The Procedures state that the level of effort required for an alternatives analysis shall be commensurate with the project's impacts. It is expected that the alternatives analysis required under the Procedures will often be less complex than a 404(b)(1) Guidelines alternatives analysis. The example of a slope protection project is the type of project that the Water Boards would expect could not be located in an alternate location; therefore, the applicant would only be required to look at onsite alternatives.
104.16	In cases where the project is serviced by a mitigation bank approved by the California Department of Fish and Wildlife (CDFW) and that mitigation bank has sufficient quantities of like-kind credits no additional watershed analysis should be required. The process conducted by the CDFW in the approval of a mitigation bank already	Items (i) and (iii) in section IV.A.2.b apply to proposals to compensate for impacts to waters of the state through purchase of credits from an approved mitigation bank or in-lieu fee program. The draft compensatory mitigation plan elements detailed in Subpart J require that the project proponent address how the anticipated functions of

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	considered a watershed approach. At no time should applicants be forced to complete a watershed level analysis for participating in a Corps and CDFW approved mitigation bank. The need to conduct additional analysis regarding the suitability of a mitigation bank within a given service area is inconsistent with the 2008 Final Mitigation Rule [footnote], creates duplicity, and uncertainty. Because mitigation banks have already undergone intensive agency review, have incorporated a watershed approach, and include mitigation credits specific to that watershed, the 2008 Final Mitigation Rule sets a preference for the use of mitigation banks. This preference should be adopted by the State Board without the need for additional analysis related to watershed evaluations, preparation of a watershed plan, or development of a watershed profile. The desire to track cumulative impacts within in a watershed is the responsibility of the Water Board not the regulated public.	the mitigation project will address watershed needs. Item (i) requires that the applicant compare watershed characteristics at the impact site and mitigation site; item (iii) requires that the applicant analyze how the mitigation proposal will meet the watershed needs. These considerations should apply to applicants proposing to purchase credits to ensure that the plan includes rationale as to why the type of credit and mitigation bank or in-lieu fee program location addresses no net loss of aquatic resources at the impact site. These requirements are not duplicative of the CDFW process for approving the establishment of a mitigation bank. Whereas the bank establishment process focuses on the general requirements that the bank must meet in order to be authorized to release credits (e.g., amount of funding required and performance standards), the Procedures' requirements ensure that the use of the mitigation bank credits is appropriate for the specific project impacts. The applicant may use information from the bank to satisfy the watershed profile of the compensatory mitigation project requirement.
104.17	Currently the Regional Boards apply different definitions for, but not limited to, ephemeral drainages, ditches, intermittent streams, vernal pools, vernal swales, and artificial wetlands. To make matters more confusing for the regulated public the Regional Boards definitions differ from the Corps definitions for the same feature. We suggest that the Regional Boards adopt the federal definitions or, if not, provide a comprehensive dictionary of terms that are	See general response #11.

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	accepted uniformly by the Regional Boards.	
104.18	We highly recommend significant clarifications, additions, and adaptations of federal definitions for aquatic resources to reduce inconsistency among Regional Boards and the Corps.	See general response #11.

Letter 105: County of Marin Department of Public Works

Comment Number	Comment	Response
105.1	The proposed Procedures will drastically increase this financial burden by requiring that new projects and annual maintenance develop new studies and plans, including Alternatives Analysis; Watershed Scale Analysis to Identify Mitigation; Compensatory Mitigation Plan; Mitigation Monitoring Plan; WQ Monitoring Plan; Restoration Plan; Invasive Species Monitoring Plan; Assessment Plan; Watershed Profile; Wetlands Delineation Report (state), Aquatic Resource Report; Maintenance Plan, Performance Standards, Long-term Management Plan, and Adaptive Management plan.	Section 11 “Economic Considerations” of the Staff Report provides an analysis of compliance with the Procedures, including methods for achieving compliance, and the associated costs. Many of the elements of the Procedures are the same as the federal CWA section 404(b)(1) Guidelines. As such, much of the Procedures are already applicable to projects in waters of the U.S. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California’s aquatic resources. As stated in section 6.6 of the Staff Report, the Procedures will also provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1 and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal thereby reducing the number of information requests and expediting the application review process. In addition, the items listed by the commenter are required conditionally, meaning they are required

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		when a situations triggers that requirement. For example, a draft compensatory mitigation plan is required in cases where compensatory mitigation is required.
105.2	To increase that burden with additional requirements, applicable to even small projects (<.1 acers), will directly affect our Divisions' ability to complete projects that provide sustainable flood protection and safe roads and infrastructure for the public.	For the reasons discussed in section 6.6 of the Staff Report, the Procedures will clarify and streamline existing Clean Water Act section 401 certification procedures in California, thereby reducing regulatory redundancy and increasing the consistency of section 401 authorizations, while better protecting California's aquatic resources. Overall, regulatory certainty will be increased through consistent regulatory practices across all Regional Water Boards. Consistent regulatory practices will reduce procedural complexity in the administration of the state and federal regulatory programs. Most of the requirements listed in the Procedures reflect current practice, although they are not applied consistently across the Boards.
105.3	A trade-off between public safety and environmental enhancement should not be implicitly endorsed by the State Water Board through the proposed Procedures. As such, Marin County requests that the State Water Board consider the financial burden of compliance, and propose revisions to the Procedures which would exempt or limit new regulations for maintenance and repair of existing public infrastructure.	As explained in Section 1 "Economic Considerations" of the Staff Report, the Procedures are not expected to add additional regulatory burdens and costs. Instead, the Procedures will streamline and clarify section 401 permitting in California, and thereby reduce overall costs of section 401 permitting.

Letter 106: County of Orange Department of Public Works

Comment Number	Comment	Response
106.1	This comment letter addresses OC Public Works' primary concerns regarding the Definition and Procedures from perspective of flood control, water conservation, and storm water quality. In particular, OD Public Works is concerned about the impact of the Procedures on its ability to effectively maintain critical infrastructure serving these goals.	Comment noted. See responses to comment 106.2 through 106.15 which address the commenter's specific concerns.
106.2	Our most significant concern with the Definition and Procedures relates to the definition of "Wetland" contained in Section II. This concern goes to fundamental public safety and health issues. For example, stormwater infiltration basins are an increasingly important source of water for the residents of Orange County, as well as other areas of Southern California. Flood Control facilities must be maintained in a manner which protects the lives and property of the residents of Orange County. Certain artificial water features in this infrastructure may constitute "wetlands" and thus waters of the state under the broad definition of "Wetland" set forth in the Definition and Procedures. Required maintenance of such features, if deemed to constitute the "dredging" or "filling" of a "wetland" subject to the requirements of the Definition and Procedures, would result in a significant impairment of the features' utility and, as a result, to public safety, due to the delays inherent in Water Board review and permitting requirements. Further, the impairment to utility and public safety would be without a compensating benefit to wildlife habitat or	See general responses #2 and #12.

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	uses of waters of the state.	
106.3	The Definition and Procedures contain two exemptions from "waters of the state" status for waters features used for "settling of sediment" (Section 11.4.d.ii) and "storm water detention, infiltration, or treatment." (Section II.4d .iii). OC Public Works appreciates that this language represents an effort by State Water Board staff to address concerns about impacts on such facilities from application of the Definition and Procedures. However, as noted below, the exceptions to this exemption could make the exemptions essentially meaningless.	See responses to specific comments below.
106.4	Additionally, the exemptions also do not refer to other public works activities which may involve a water feature, such as roadside ditches or debris entrapment facilities.	See general response #11.
106.5	OC Public Works requests that Section II of the Procedures be modified to include a specific exemption for these features, as set forth below: Definition and Procedures, Section 11.4.d should be modified as follows: Delete (ii) "Settling of Sediment," and (iii), "Storm water detention, infiltration, or treatment." A new Section 11.4.e would be added, which would provide as follows: . Artificial wetlands used for the following purposes are not waters of the state: i. Settling of sediment, ii. Storm water detention, infiltration or treatment, or i. Flood control and protection, including	See general response #2.

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	channels, basins and debris basins.	
106.6	Alternatively, OC Public Works requests that these facilities specified in the new proposed Section 11.4.e., above, not be subject to the exceptions in 11.4.b. ("[s]pecifically identified in a water quality control plan as a wetland or other water of the state," and 11.4.c, "[r)esulted from historic human activity and has become a relatively permanent part of the natural landscape."	See response to comment #106.7 (below) and general response #2.
106.7	In the context of the municipal facilities identified herein, these exceptions make little sense. First, with respect to the exception for water features identified in a water quality control plan, waterbodies in a plan generally provide multiple beneficial uses. The municipal facilities discussed in these comments serve a single purpose, such as flood control or groundwater recharge. It is the potential for interference with this vital health and safety function that is the basis for OC Public Works' concerns.	As discussed in section 6.5 of the Staff Report, the jurisdictional framework provides clarity and certainty about how to determine if a wetland is a water of the state. However, it is infeasible within a statewide water quality control plan to encompass every possible situation that could occur. Thus, some element of site-specific discretion is necessary and appropriate. Therefore, the Procedures provide that if a Water Board includes specific wetlands in its water quality control plan, those identified wetlands will be waters of the state. For example, the Water Quality Control Plan for the San Francisco Bay expressly identifies 34 significant wetlands. These wetlands shall always be protected as waters of the state, even if the wetlands might otherwise qualify for one of the exclusions discussed in section II.3.d of the Procedures. This provides the Water Boards with the flexibility necessary to address site-specific conditions, while ensuring opportunities for stakeholder involvement through a public process.

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106.8	Second, with regard to the exception for waters created by historic human activity, this exception could swallow the exemption completely. What constitutes "historic human activity" could encompass any anthropogenic activity undertaken at any time. Similarly, the phrase "relatively permanent part of the natural landscape" is inherently vague and ambiguous. What constitutes a "relatively permanent part" of the landscape, for example, is subject to no definitional limit. Similarly, what constitutes a "natural landscape" is vague.	See general response #2.
106.9	OC Public Works respectfully submits that these exceptions should not apply to the maintenance of critical water supply and flood control infrastructure. If there is no clear delineation between, on the one hand, municipal water conservation, storm water conveyance and flood control facilities, and on the other, waters of the state, the maintenance and operation of such facilities would be adversely impacted by requiring the operators of such facilities to resort to the project application procedures set forth in the Definition and Procedures. This impact, however, is not adequately addressed in the Supplemental Environmental Documentation (SED) for the project.	Section 11 “Economic Considerations” of the Staff Report provides an analysis of compliance with the Procedures, including methods for achieving compliance, and the associated costs. Many of the elements of the Procedures are the same as the federal CWA section 404(b)(1) Guidelines. As such, much of the Procedures are already applicable to projects in waters of the U.S. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California’s aquatic resources. Also see general responses #2 and #12.
106.10	In particular, Section 8.9 of the Draft Staff Report, which concerns the effects of the project on Hydrology and Water Quality, notes that a groundwater impact is "significant" if implementation of the Definition and Procedures "would result in	Section II.3.d has been revised to add “artificial recycled water treatment, storage, or distribution” and “maximizing groundwater recharge.” These types of wetlands serve a similar function and purpose compared to the other types of artificial treatment wetlands listed

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	depletion of groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table ." Draft Staff Report, page 168. Nothing in the SED discussion of impacts on hydrology or water quality impacts discusses or even notes the impact on groundwater resources if, due to delays or conditions associated with the application of the dredge and fill procedures to groundwater infiltration basins, the efficient operation of such critical infrastructure is prevented. These basins must be rigorously maintained to maximize infiltration of stormwater, recycled water and other surface water flows. Application of the dredge and fill procedures has the potential for interfering with the maintenance of these basins such that there could be a significant impact on groundwater aquifers, which supply much needed potable water to communities in Orange County.	in the Procedures that are not considered waters of the state (section II.3.d). Section IV.D was also revised to exclude certain routine and emergency operation and maintenance activities that result in the discharge of dredged or fill material to artificial existing waters. See also general response #12.
106.11	OC Public Works also is concerned about the use of the terms "case-by-case" and "if required" in the dredge and fill project application requirements. While we appreciate that some regulatory flexibility is advisable, OC Public Works is concerned that the repeated use of these terms in the dredge and fill application requirements does not provide sufficient guidance or certainty for applicants in evaluating how their activities may or may not be subject to these procedures. This ambiguity will also increase	See general response #7.

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	the burden on Water Board staff, as staff will be required to spend additional time consulting with applicants before and during the application process as to the specific requirements applicable to their projects.	
106.12	OC Public Works supports including language in the application procedures that makes clearer what is deemed to be a complete application. Clear and consistent procedures greatly increase compliance and provide certainty in forecasting conditions and scheduling.	Comment noted. As stated in section 6.6 of the Staff Report, the Procedures would streamline the Water Boards' existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process.
106.13	On a related topic, OC Public Works requests that the State Water Board work with the Department of Fish and Wildlife to develop consistent mitigation requirements when a Lake or Streambed Alteration Agreement is required rom that Department in connection with a project subject to the dredge and fill requirements. Our experience is that conflicting mitigation requirements and project delays have occurred due to differing requirements of the Water Boards and Fish and Wildlife.	See general response #10. While retaining an independent review of compensatory mitigation requirements, the Water Boards will continue to "consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits within a single mitigation project, thereby reducing the cost of compliance to the applicant." (Section IV.B.5(b).)
106.14	Orange County Public Works also requests that the Definition and Procedures provide that during routine and emergency situations, no additional compensatory mitigation or monetary compensation be required for any unavoidable impacts as part of maintenance and operations of flood control facilities (i.e., flood channels, retention/detention basins, reservoirs, debris basins). In most situations, routine repair,	California has a large number of water districts which have a mix of authorities and responsibilities created under their enabling acts. We recognize that the maintenance and operations of flood control facilities provides a very important public service, and that unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship may result if no action is taken. However, the California Water Boards are

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	operation, and maintenance activities for engineered facilities have little or no· net environmental impact.	responsible for regulating water uses that may impair water quality. This includes the many types of activities carried out by water districts in California's rivers and their tributaries, even in emergency situations. Therefore, no exemption is provided in the Procedures for these type of activities which propose to discharge dredged or fill material into state waters.
106.15	OC Public Works appreciates that pursuant to Section IV.D.2.b, routine maintenance of storm water facilities regulated under another Water Board Order are exempt from the application procedures.	Comment noted. Note that section IV.D has been revised, but still includes a procedural exclusion for the routine maintenance of facilities constructed for one or more of the purposes listed in section II.3.d (ii), (iii), (iv), (x), or (xi), which includes certain stormwater facilities. See also general responses #2 and #12.

Letter 107: Pacific Coast Federation of Fisherman

Comment Number	Comment	Response
107.1	I write to offer our support for strengthening and adopting of the Board's draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State ("Wetlands Policy") that the State Water Resources Control Board released for public comment on July 21, 2017. I also endorse the comments provided by Defenders of Wildlife et al.	The commenter's support is noted. See Letter # 99 for responses to comments submitted by the Defenders of Wildlife.
107.2	Estuarine habitats are critical to the survival of the larval and juvenile stages of Dungeness crabs. The further loss of quality rearing habitat could result in significant negative economic impacts to commercial fishermen in California. We strongly encourage the SWRCB to take estuarine habitat protections into account to protect this important commercially harvested species.	The Procedures indicate that estuarine habitats are special aquatic sites (Supplemental Guidelines, Subpart E – Potential Impacts on Special Aquatic Sites, § 230.43(a)), and are subject to certain discharge restrictions set forth in the Supplemental Guidelines, Subpart B, § 230.10(a)(3).
107.3	Because of the important value of wetlands and streams, and because of pending rollbacks in DC, a strong Board program to protect our remaining wetlands and streams is essential. Yet despite a two- decade old state "no net loss" of wetlands policy, California continues to lose wetlands. The Board has strong authority to protect wetlands and the benefits they provide for fish species. However, the Board must act to clarify and enforce that authority. We support the adoption of the proposed policy provided there are changes made to the draft.	The commenter's support for adoption is noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values.

Comment Number	Comment	Response
107.4	The draft should be strengthened to state clearly that all applicants proposing to fill or discharge to wetlands must fully evaluate alternatives.	See general response #1.
107.5	The draft should be strengthened to state clearly that projects that receive Board permits to fill wetlands will, in all cases, be required to mitigate with a ratio of at least “one-to-one.”	See general response #8.
107.6	Additionally, we believe it is essential for the policy to require an analysis of the long term as well as the short- term environmental impacts of proposed projects.	See general response #1.

Letter 108: County of Tuolume Board of Supervisors

Comment Number	Comment	Response
108.1	Tuolumne County Board of Supervisors is pleased to express its support for the letter signed by the board coalition of agencies and interests regarding the Procedures for Discharges of Dredged or Fill Material to Waters of the State.	Comment noted. See responses to comments outlined in Letter #8.
108.2	This Board feels the proposed procedures could have drastic negative impacts to counties in their ability to conduct routine maintenance on infrastructure such as ditches, culverts and bridges.	One goal of the Procedures is to reduce application processing time by clarifying the information needed for a complete application and the criteria for permit approval. Uniform statewide procedures allow for orders to be organized similarly and common application forms to be used, which should further expedite the permitting process.
108.3	This Board also requests that the definition of wetlands be consistent with what the Army Corps of Engineers and the Environmental Protection Agency determines.	See general response #4.

Letter 109: Defenders of Wildlife Form Letter

Comment Number	Comment	Response
109.1	As a Defender of Wildlife, I am writing to urge you to act quickly to adopt a statewide wetlands policy that will protect California's wetlands.	Comment noted.
109.2	Current state and federal protections for wetlands are inadequate, and if the board fails to act fast, we could lose these precious resources forever. Once the Trump administration repeals and weakens the	Comment noted.

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	federal Clean Water Rule, many important California wetlands, including vernal pools, will be stripped of Clean Water Act protections. With the federal government out of the picture, effective state regulation is essential, and the current system isn't working.	
109.3	Before adopting the policy, a few changes are necessary to make sure it's effective. The compensatory mitigation requirements should be strengthened to ensure that every lost wetland acre is replaced,	See general response #8.
109.4	the requirements for analysis of alternatives should be improved so that every project can avoid and minimize wetland impacts,	See general response #1.
109.5	and a loophole that could allow for the destruction of wetlands on some agricultural lands needs to be closed. With these changes, you can protect our wetlands and help make sure California complies with its no-net-loss obligations.	It is not clear from the comment what is meant exactly by a “loophole.” Clarification is needed to respond to this comment in more detail. Note that concerns regarding wetlands on agricultural lands are addressed throughout this response to comment document, particularly in general response #3.

Letter 110: National Audubon Society Form Letter

Comment Number	Comment	Response
110.1	As someone who cares deeply about the protection of our state's wetlands and the habitat they provide for migratory birds, I am writing to support the California Water Resources Control Board's efforts to create a new wetlands protection policy.	The commenter's support for the policy is noted.
110.2	I support the provisions of the draft plan that establish authority under the state's Porter-Cologne Act to protect isolated wetlands. I am also pleased to see the emphasis on avoiding and/or minimizing harm to wetlands over just requiring mitigation for impacts, which is often inadequate is poorly enforced.	Comment noted.
110.3	Finally, the provisions for standardizing procedures for permitting across jurisdictions will avoid a region-by- region approach that allows some Regional Boards to be less protective of wetlands than others. These rules create more certainty for landowners, farmers, industry, and the public.	Comment noted.
110.4	Before the policy is adopted, it should be strengthened to ensure there is no net loss of wetlands due to further human activities and development.	Comment noted.
110.5	The policy should also close the loophole that allows development of agricultural lands that were created after dredging or filling native wetlands ("prior converted wetlands"). If left unchanged, this loophole would allow landowners to "convert" natural wetlands	See general response #3.

Comment Number	Comment	Response
	to cropland, then develop it for urban or industrial uses.	

Letter 111: Sierra Club Form Letter

Comment Number	Comment	Response
111.1	Thank you for your leadership on protecting California's wetlands. Wetlands provide key functions in our ecosystem, and we must do all we can to protect the less than 10% of our historic wetlands that we have left. We urge you to adopt strong protections for our wetlands. As you're aware, the federal government is planning to rescind the Clean Water Rule, and let more wetlands across the country be destroyed. This is unacceptable for California. The Water Board needs to intervene and adopt a strong rule for wetlands as soon as possible.	Comment noted. Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetland acreages and values.

Letter 112: California Farm Bureau Form Letter

Comment Number	Comment	Response
112.1	As a farmer, I recognize the economic and environmental benefits that wetlands provide to this state. However, I'm concerned that the current draft of the "State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State" (Procedures) will negatively impact my ability to continue my business. The Procedures' scope is excessive and includes vague and undefined terms that are likely to lead to inconsistent application of the Procedures. More specifically, I am concerned that the Procedures overlap and conflict with other regulatory programs such as the following:	See general response #10.
112.2	The Procedures should not apply to waters ALREADY subject to CA Department of Fish and Wildlife (CDFW) regulation under the Streambed Alteration program.	See general response #10.
112.3	The Procedures add a new definition of "wetland" that varies from the definition under the federal Clean Water Act and would consider an area without any vegetation as a "wetland." This is not supported by science, conflicts with the U.S. Army Corps of Engineers Corps' (Corps) definition, and will be problematic in application.	See general response #4.
112.4	The Procedures apply to all waters of the state, not just wetlands. Consequently, the Procedures create a mandatory permitting program for ALL waters of the state. Instead, the Procedures should be limited to wetland waters of the state that are	Also see general responses #4 and #11.

Comment Number	Comment	Response
	not waters of the U.S.	
112.5	The Procedures add regulatory confusion to everyday farming and ranching practices and the agricultural exemptions are inconsistent, causing uncertainty. Additionally, the Procedures misstate and limit the Prior Converted Cropland exclusion.	See general response #3.
112.6	Many agricultural areas of the state are already regulated under irrigated lands regulatory program orders (waste discharge requirements or conditional waivers of waste discharge requirements). These programs include extensive measures to protect water quality, manage sediment and erosion, and implement best management practices. Therefore, the Procedures should not apply to waters already regulated under an Irrigated Lands Regulatory Program order.	Comment noted. Section IV.D of the Procedures and section 6.8 of the Staff Report identify areas and activities that are exempt from complying with these specific Procedures. Examples of activities include, but are not limited to, normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; maintaining or reconstructing structures that are currently serviceable; and constructing temporary sedimentation basins for construction. These areas and activities are not exempt as waters of the state and could be regulated under another program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures.
112.7	As currently drafted, the Procedures will negatively	Comment noted.

Comment Number	Comment	Response
	affect agricultural businesses such as mine and the State Water Board should not adopt the Procedures. I believe the state can accomplish its goal to protect wetlands, while at the same time minimizing duplication and conflict with existing state and federal regulations. The Procedures should be rewritten to protect water quality without compromising the rights of farmers and ranchers, landowners, and businesses.	

Letter 113. California Farm Bureau Form Letter with Additional Comments from Kawamoto, CJ

Comment Number	Comment	Response
113.1	Before adopting these pending regulations, please obtain reasonable answers from staff 1. Why are these regulations necessary? 2. To prevent WHAT potential harm? 3. What compliance issues are most likely to put farmers in noncompliance/legal jeopardy? 4. What will compliance cost farmers?	The Staff Report explains the need for the Procedures in the Project Need section. The Procedures have many objectives, one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. In addition, the proposed Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state and to prevent further losses in the quantity and quality of wetlands in California. The Project Need section of the Staff Report also gives more detail regarding State Water Board Resolution 2008-0026, which directed the State Water Board to "take action to ensure the protection of the vital beneficial services provided by wetlands and riparian areas through the development of a statewide policy (Policy) to protect wetlands and riparian areas that is watershed-based." Phase 1 was to establish a Policy to protect wetlands from dredge and fill activities. The Policy, now known as the Procedures, was directed to include a wetland definition and a wetland regulatory process that includes a watershed focus. Section 11 "Economic Considerations" of the Staff Report provides an analysis of compliance with the Procedures, including methods for achieving compliance, and the associated costs. Many of the elements of the Procedures are the same as the federal CWA section 404(b)(1) Guidelines. As such, much of the Procedures are already applicable to

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		projects in waters of the U.S. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California's aquatic resources. In addition, section IV.D of the Procedures and section 6.8 of the Staff Report identify areas and activities that are exempt from complying with these specific Procedures. Examples of activities include, but are not limited to, normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; maintaining or reconstructing structures that are currently serviceable; and constructing temporary sedimentation basins for construction. These areas and activities are not exempt as waters of the state and could be regulated under another program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures. Also, see general response #6.