

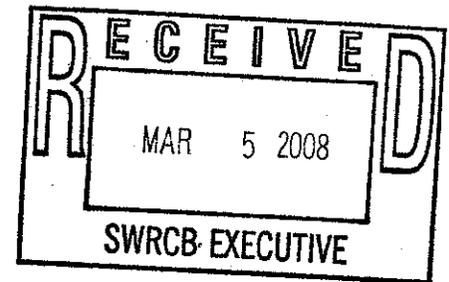


**Riverside County  
Waste Management Department**

*Hans W. Kernkamp, General Manager-Chief Engineer*

3/18/08 Bd Mtg. Item 11  
Wetlands & Riparian Areas  
Deadline: 3/5/08 by 12 p.m.

March 4, 2008



Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, California 95814

**RE: Comment Letter - Policy to Protect Wetlands and Riparian Areas**

Dear Ms. Townsend:

This letter is being written in response to the *Draft* resolution that will be considered by the State Water Resources Control Board (SWRCB) for adoption at the March 18, 2008 SWRCB meeting, directing SWRCB staff to develop a statewide, watershed-based policy (Policy) in three phases for the protection of wetlands and riparian areas. The Riverside County Waste Management Department (RCWMD) has reviewed the Staff Report and the *Draft* resolution, along with other related documents, including the August 2007 Final Report, entitled *An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Resources Control Board, 1991-2002* (prepared by Richard F. Ambrose, *et al.*, with the University of California, Los Angeles [UCLA] and the University of San Francisco [USF]), and would like to submit into the record for your consideration the following comments:

1. The RCWMD manages the landfill disposal system in Riverside County, being responsible for providing for the waste disposal needs of the County and its residential population of over two million people. As one of the fastest growing counties in the State of California, and with substantial growth still projected over the next quarter century, it will be necessary to expand the two regional landfills, Badlands and Lamb Canyon, owned and operated by the RCWMD, to accommodate future waste generation. With solid waste being a highly regulated industry, subject to complex and overlapping regulations from many federal and State agencies, this task is daunting even in the context of the existing environmental and regulatory framework. Knowing then that expansion of these public facilities will result in the cutting and filling of watercourses, the RCWMD is extremely concerned that the proposed Policy will either exacerbate these processes or restrict our ability to expand. The RCWMD could only support a Policy that complies with the 1993 California Wetlands Conservation Policy and streamlines the permitting processes, leads to more consistent consideration and interpretation by State and federal agencies, and creates a more scientifically-based regulatory framework for the protection of water resources than currently exists.
2. While the RCWMD totally supports protection and enhancement of wetlands and riparian areas, the scope of the proposed Policy addresses more than just the waters of the State

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that are no longer subject to regulation under the Clean Water Act (CWA), as originally intended. As such, the Policy has the potential to: a) conflict with existing State and federal definitions, existing delineation/survey methods, and with existing policies and regulations affecting wetland/riparian areas; b) impair cooperation among State and federal agencies that share jurisdiction over wetland/riparian area, and, c) make compliance and/or compensatory mitigation impossible to attain when impacts are anticipated.

3. While Supreme Court rulings, specifically the SWANCC and Rapanos decisions, may reduce Army Corps of Engineers (ACOE) jurisdictional waters, as defined by the CWA Section 404, there are still regulations in place that provide for the protection of non-ACOE jurisdictional waters and "bridge the gap" in protection. Aside from the CWA Section 401, which requires the SWRCB to certify that a project will not adversely impact water quality and to require compensatory mitigation if it does, the State can regulate impacts to wetlands and other aquatic resources under the Porter-Cologne Water Quality Control Act through Waste Discharge Requirements (WDRs), which regulate both point source and non-point source pollutant discharges into "waters of the state." As defined by the State, "waters of the state" are any surface water or groundwater, including saline waters, within the boundaries of the State. Additional regulation includes the CWA Section 402 requiring National Pollution Discharge Elimination System (NPDES) permits for point source discharges, as well as, the Fish and Game Code, Section 1600, *et seq.*, which allows the California Department of Fish and Game (CDFG) to require a Streambed Alteration Agreement to mitigate impacts to riparian habitats from bed to bank. At a local level, Riverside County has Multiple Species Habitat Conservation Plans (MSHCPs) in place that contain policies to protect riparian/riverine resources. Currently, to complement the ecosystem approach of the MSHCPs, ACOE has plans to prepare a Special Area Management Plan (SAMP) for protection of wetlands/waters of the U.S. within Riverside County. Considering the amount of regulations, plans, and guidelines utilized for protection of wetlands and riparian areas, it seems that there is appropriate regulatory attention being given to ensure these resources are not lost.
4. Based on the UCLA and USF collaborative study, progress has been made in that most projects have met CWA 401 permit and mitigation requirements. Rather than create a new Policy, the SWRCB should first evaluate the adequacy of existing regulations and policies and correct the internal deficiencies noted in the study (i.e., permit tracking database, permit archiving, deficient monitoring, etc.). The existing regulatory structure may be more than adequate to address wetlands/riparian areas protection. The RCWMD is more supportive of ways that will achieve consistency between the various agencies (i.e., consistent definitions for wetlands, riparian areas, isolated waters, etc.) and make the process more efficient in obtaining the various approvals and permits to protect wetlands/riparian areas. The RCWMD is not supportive of more stringent requirements or burdensome permitting. Some suggestions are to include Regional Water Quality Control Boards (RWQCBs) in the ACOE SAMP process, which allows for data

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collection and the watershed approach to protection of wetlands. To streamline the permit process, the SWRCB might also consider the development of templates for mitigation and monitoring plans and working cooperatively with other regulatory agencies to develop one permit to satisfy CWA 401, CWA 404, and CDFG 1600, *et seq.*, requirements (i.e., similar to the CEQA concept of one project, one document).

5. If the SWRCB should adopt the proposed resolution, directing SWRCB to develop the Policy, special consideration should be given to those public works projects or public facilities that are critical in protecting public health and safety.
6. Since most wetlands within California are still subject to the CWA, the ACOE definition of wetlands should be retained. For non-ACOE jurisdictional wetlands, a wetland definition should focus on common characteristics and should not be too broad or general as to define any wet spot on the ground as a wetland.

If the SWRCB should adopt the resolution, directing SWRCB to develop the Policy, the RCWMD respectfully requests that the RCWMD be identified as a stakeholder and that the RCWMB be noticed on informational updates, workshops, meetings, hearings, or other actions intended on this matter (i.e., notices pursuant to the California Environmental Quality Act [CEQA]).

Thank you for the opportunity to comment on the *Draft* resolution. Your consideration of these comments would be appreciated. If you should require further information or have any questions, please do not hesitate to contact me directly at (951) 486-3280.

Sincerely,



Lesley B. Likins  
Planning Manager

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PD #63505v2