

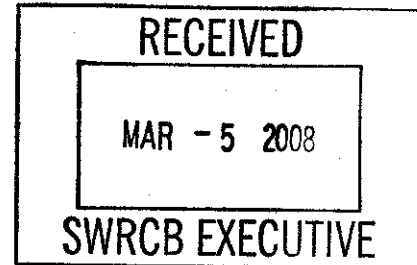


IRVINE RANCH WATER DISTRICT

15600 Sand Canyon Ave., P.O. Box 57000, Irvine, CA 92619-7000 (949) 453-5300

March 5, 2008

Jeanine Townsend
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Notice of a Proposed Board Resolution to Develop a Policy to Protect Wetlands and Riparian Areas, and Opportunity for Public Comment

Dear Ms. Townsend:

Irvine Ranch Water District (IRWD) has received and reviewed the subject proposal from the State Water Resources Control Board (SWRCB) and offers the attached specific comments related to the proposed Board resolutions. The following general comments are also provided:

IRWD provides water, sewer, recycled water and natural treatment system service for the cities of Irvine and portions of Tustin, Newport Beach, Costa Mesa, Orange and Lake Forest. In addition to providing water to customers, IRWD is committed to the development and protection of wetlands and water quality. IRWD, in cooperation with the County of Orange and various local cities, is developing the Natural Treatment System (NTS). The purpose of the NTS plan is to construct 31 water quality wetlands to help treat urban runoff in central Orange County and to improve water quality in Upper Newport Bay. The overall objectives of NTS are to:

- Ensure that the NTS network of constructed wetlands conforms to the objective of the Federal Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."
- Assist County and Cities and others in meeting TMDLs and National Pollutant Discharge Elimination System (NPDES) permit requirements.
- Provide a comprehensive, regional, watershed-wide approach to clean up storm runoff and dry weather flows from: a) existing land uses, and b) future land uses.
- Improve water quality in San Diego Creek, Upper Newport Bay Ecological Reserve, and Newport Bay.
- Enhance habitat value of aquatic and riparian habitats located within the Natural Community Conservation Plan (NCCP) Reserve.

IRWD has already proven the success of wetlands for the treatment of urban runoff at its San Joaquin Marsh (Marsh). The Marsh was designed and constructed to remove nitrogen from the

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adjacent San Diego Creek and typically removes 30 tons of nitrogen per year. In addition, the Marsh provides nesting and foraging habitat for rare and endangered species (Least Bell's Vireo), a variety of habitats including open water, lacustrine fringe, riparian and upland. The Marsh and the NTS basins not only provide effective urban runoff treatment, but also provide rich habitat and valuable publicly accessible open space right in the middle of an urban environment.

While IRWD is responsible for the construction and operation and maintenance of NTS and the Marsh, much of the success of these projects is due to the cooperative effort among IRWD, the County of Orange, cities, water quality regulators, wildlife officials, landowners, and the public. Due to the broad scope included in the subject proposal, IRWD is concerned that this type of effective cooperation and teamwork may be impacted with unnecessary regulation. Because IRWD needs to manage the Marsh and NTS to serve urban and wildlife needs, it is concerned that the proposed policy and subsequent regulations could impact IRWD's ability to operate, maintain and manage these facilities.

In addition to the Marsh and NTS, IRWD manages several open water reservoirs to store and deliver recycled water to its customers. Open water reservoirs are a key part of our seasonal recycled water storage facilities and IRWD must be allowed to fill and draw water from the reservoirs to meet customer demands. IRWD is moreover concerned that the proposed policy could impact IRWD's ability to store and use the recycled water in these open reservoirs and subsequently have a negative impact on IRWD's ability to serve its customers.

We look forward to working with the Regional Board and the other stakeholders to make a meaningful improvement in water quality. However, we are concerned that new regulations to protect wetlands and riparian habitat may make it difficult to pursue our own wetland and riparian initiatives as well as unnecessarily hinder operating our facilities. We would greatly appreciate the opportunity to review and comment on this policy as it develops.

If you have any questions or need further information on IRWD's managed wetland and riparian habitats, please contact Paul Weghorst at (949) 453-5632 or Natalie Likens at (949) 453-5633.

Sincerely,

IRVINE RANCH WATER DISTRICT


Paul Cook
Assistant General Manager

PC/PW/nl

Attachment

cc: Jim Hyde, Water Quality
Paul Weghorst, Water Resources
John Hills, Water Quality
Randy Sundberg, Engineering and Planning
Lou Denger, Water Operations

**Irvine Ranch Water District Specific Comments
on the Proposed SWRCB Wetlands and Riparian Protection Policy
March 5, 2008**

The Irvine Ranch Water District (District) has reviewed the proposed "Development of a Policy to Protect Wetlands and Riparian Areas in Order to Restore and Maintain the Water Quality and Beneficial Uses of the Waters of the State," hereafter called the Policy. The word "protect" is used extensively throughout the Policy, however from a regulatory perspective, there is scant discussion what the Policy will "protect from". In order to provide guidance, IRWD considers that the Policy needs to identify what wetlands and riparian areas are to be protected from; it is not sufficient guidance to state that the policy will protect wetlands and riparian areas.

IRWD reviewed the supporting documents related to the drafting of the Policy and found that some of the documents had a direct nexus to the Policy, while other documents were only peripherally related to the Policy. One example is the 2007 Study: "An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the State Water Resources Control Board, 1991-2002". The results of the study apply more to the management of Section 401 permits rather than to the management of projects subject to Section 401 permits. IRWD is unclear how Section 401 permitting relates to the purpose and intent of the policy, especially how the policy relates to self-sustaining habitat.

The District offers the following specific comments on the proposed policy resolutions:

#1 on Page 2 of Draft States:

"The State Water Board recognizes the beneficial services of wetlands and riparian areas for people and wildlife in protecting and improving water quality, providing fish and wildlife habitat including unique plant communities (i.e., wetland and riparian vegetation), storing floodwaters, maintaining surface water flows in dry periods, and other valuable functions. California has a rich ecological diversity, therefore, the State Water Board further recognizes that watershed focused planning is the most effective strategy for maintaining and enhancing these functions."

Comment: As stated, the State Water Board recognizes the beneficial services of wetlands and riparian areas for...improving water quality. The District has extensive knowledge that constructed wetlands can function to remove nutrients, inorganic pollutants and other pollutants. It is in the nature of wetlands and riparian areas to remove, sequester and otherwise render harmless pollutants. Wetland and riparian areas may not need to be protected from the functions they perform naturally; they need to be protected when they cannot perform their natural functions.

Comment: In the southern and eastern parts of the state, maintaining surface water flows in dry periods often runs counter to the natural environment. In many parts of the state, seasonal or periodic drying is necessary to maintain a unique environment. While this environment may not be the most productive or optimum environment; it is the natural environment and should be recognized as such.

Comment: The District is concerned with the strategy of "watershed focused planning" as it relates to the maintenance of wetland and riparian functions as well as the regulatory authorities exercised by the State Water Board. The term "watershed focused planning" is very broad in nature and not well defined.

#2 on Page 2 of Draft States:

"The State Water Board will take action to ensure the protection of the vital beneficial services provided by wetlands and riparian areas through the development of a statewide policy to protect wetlands and riparian areas (Policy) that is watershed-based, and that extends to all (emphasis added) perennial, intermittent, and ephemeral watercourses, including wetlands, from headwater regions to lowland river mouths."

Comment: Based on the above statement, it appears that the State Water Board intends to develop a policy which includes all wetlands, all riparian areas and all areas where water may flow, whether public or private, from the tops of the mountains to the Pacific Ocean. It is unclear as to whether the intent of the State Water Board proposed policy is to regulate or manage every activity in the State.

Comment: The three phases described in the Policy outline the procedure to be followed. Based on the broad scope of the Policy, the District is concerned that the proposed schedule may be too ambitious to accomplish in the time frame allocated, given the functions, objectives and implementation alternatives that will need to be assessed. The District would welcome a well thought out analysis, even if such analysis takes a much longer period of time.