

California Council for Environmental and Economic Balance

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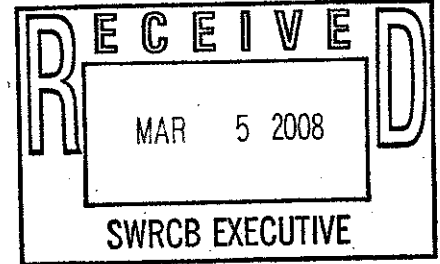
Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Comment Letter – Policy to Protect Wetlands and Riparian Areas

Dear Members of the Board:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit organization of business, labor and community leaders that sees to achieve the State's environmental goals in a manner consistent with a sound economy. This letter comments on the State Water Resources Control Board (SWRCB)'s proposed Resolution to Develop a Policy to Protect Wetlands and Riparian Areas (Resolution).

CCEEB concurs that a Policy will bring clarity and consistency to the definition and regulation of state-only waters (including wetlands and riparian areas) and supports the development of the Resolution for that purpose. However, CCEEB is concerned that the Board's direction concerning the scope of the policy, as stated in the tentative Resolution, may broaden the resulting regulatory program far beyond the original purpose of "filling the gap" that was created by the SWANNC court decision and other subsequent court decisions. Broadening the scope of the regulatory program has the potential to negatively impact CCEEB member companies and the essential public services they provide. CCEEB believes the policy to be developed pursuant to the Resolution should focus on "filling the gap" and stay within the SWRCB's existing legal authorities.



CCEEB has been an active participant in recent proceedings on proposed policies and permits before SWRCB, including proceedings on construction stormwater to ensure that the SWRCB plans, policies and permits address linear projects in a manner that is environmentally protective and that also provides for and supports the need for the reliable delivery (i.e., transmission and distribution) of essential public services, such as natural gas and electricity. Delivery of these services requires routine and emergency construction, operation, inspection, maintenance, repair and replacement of utility and other linear construction infrastructure.

A primary mandate by the California Public Utilities Commission and/or other state and federal regulatory agencies to utilities and other entities with linear facilities is to provide safe and reliable service. Since CCEEB's member companies have thousands of miles of linear facilities, they need an efficient and timely process to obtain any required permits and authorizations for work in state waters, while minimizing overlap and inconsistencies between multiple state and federal agency requirements.

The Policy needs to accommodate both the need of these companies to provide safe and reliable essential public services and to protect water quality.

Issues that should be addressed during the development of the policy include the following:

- **Scope of the Proposed Policy** - One of the three stated primary needs for the Resolution is to address the "lack of clarity in the existing regulatory framework for protecting wetlands and riparian areas that are no longer regulated under the federal Clean Water Act due to recent U.S Supreme Court decisions that have limited the extent of federal jurisdiction under the Clean Water Act. However, the draft Resolution appears to direct staff to go beyond the goal of "filling the gap" and expands current SWRCB jurisdiction. CCEEB requests that the scope of the policy outlined in the Resolution be limited to "filling the gap".

To the extent the scope of the policy and the implementing regulatory program goes beyond "filling the gap", it will increase the types and numbers of projects for which permitting will likely be required. This increase in permitting activity will impact not only the State and Regional Boards, but also the companies with linear facilities. Therefore, the policy alternatives need to identify the implementation mechanisms that would be used under the alternatives that are studied so that impacts to permitting linear facility projects can be assessed and quantified. The costs and potential delays to obtain any applicable permits also need to be assessed in the policy alternatives proposed to the Board.

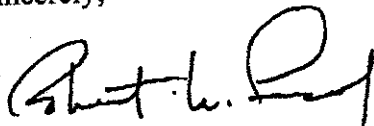
- **Linear Operations** - Linear operations require policies and permits that facilitate gaining the access and approvals to conduct operations in an efficient and timely manner. The Policy needs to be protective of the environment, recognize that companies with linear facilities need to maintain the safety and reliability of their services, and not unnecessarily add additional layers of regulation. The policy

alternatives developed pursuant to the Resolution need to assess the impact of any potential cost and delays to these companies in providing services and any potential for reduced safety and/or reliability of their services.

- **Economic and Social Values** - Section 13140 of the Porter-Cologne Act requires that SWRCB formulate and adopt state policy in conformity with the policies set forth in Chapter 1 (starting with Section 13000). Therefore the Policy needs to be reasonable and consider the total values involved, including its impact on economic and social values and the CEQA and Porter-Cologne analyses need to address the linear facility activities identified above that are required to maintain the safety and reliability of these essential public services.
- **Regulation of Other Activities** - We agree that there is a lack of consistent statewide requirements for evaluating the condition of wetland and riparian area resources and encourage the State Board to consider such requirements. However, we are concerned with the State Board's proposal to regulate "potential impacts from discharges and other activities." Again, we request that the State Board acknowledge that unless a person is discharging waste, or proposing to discharge waste, an application for waste discharge requirements would not be required. The State Board's reference to "other activities" appears to be another attempt to expand the jurisdictional authority of the State and Regional Boards.
- **Permitting Consistency** - The Policy should provide for consistency between all regulating agencies and eliminate, if possible, or at least minimize overlap in regulation. For example, the Department of Fish & Game (DF&G) regulates riparian areas. Having the SWRCB/RWQCBs also regulate riparian areas appears to be a duplication that is not necessary. The Policy should assess the potential for regulatory overlaps and avoid them. This would be consistent with the California Wetland Conservation Policy goal to reduce procedural complexity in the administration of State and Federal wetlands conservation programs.

CCEEB appreciates this opportunity to comment. We hope to work together with SWRCB and the other stakeholders toward developing a wetland protection policy of appropriate scope. If you have any questions or would like to discuss these comments further, please contact Bob Lucas at 916-444-7337.

Sincerely,



Robert W. Lucas
Waste & Water Quality Project Manager



Gerald D. Secundy
President