commentletters - Wetland Area Protection Policy Initial Study Comments

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Date: 5/19/2011 5:35 PM
Subject: Wetland Area Protection Policy Initial Study Comments
CC: "Hildebrand, Gary" <GHILDEB@dpw.lacounty.gov>, "Grant, Terri" <TGRANT@dp...
Attachments: Wetland Area Protection Policy Initial Study Comments.pdf

Ms. Townsend - Attached you will find comments on the Wetland Protection Policy and Dredge and Fill Regulations Initial Study from the Los Angeles Flood Control District.

<<Wetland Area Protection Policy Initial Study Comments.pdf>>

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1. Page 4 of the Project Background Section states, "These historic losses signal an urgent need to protect the remaining wetland resources in the state, as remnant wetlands in many watersheds provide the only extant sources of critical water quality functions, such as maintenance of plant and animal communities, pollutant filtration, and flood peak attenuation/flood water storage, in those areas (NRC 1995)." Context relating to this statement needs to be provided in the Wetland Policy by quantifying, for key areas in the State, pollution filtration, flood peak attenuation, and flood water storage benefits of the subject wetlands.

2. Table 1, "Wetland Definitions/Descriptions Contained in Basin Plans" states that, several regional water quality control boards consider riparian areas to be wetlands. However, although riparian areas are "waters of the United States", not all riparian areas or streams meet the U.S. Army Corps' definition of wetlands as proposed to be used by the State. A more thorough definition should be applied.

3. Page 6 of the Current Wetland Definitions and Delineation Methods Section lists the beneficial uses of the waters in wetland areas as provided in the State Water Boards' 2003 report to the Legislature. Again, context as to the areas of the State with these beneficial uses needs to be provided in the Initial Study and considered in the new regulations.

4. Page 7 of the Current Statutory and Regulatory Framework Section states, "Although NEPA is only procedural and does not require federal agencies to select the least environmentally damaging alternative, federal regulations prevent the Corps from issuing a permit if there are less damaging alternatives available. (40 C.F.R. § 230.10(a))." This interpretation is misleading; the statement should be corrected to reflect what the regulation actually states: "...no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." Other significant adverse environmental consequences can include but are not limited to: increased flood hazards, restrictions on regional water supplies, and significant increases in regional air emissions. Therefore, it needs to be clear that protection of wetlands is not intended to be at the expense of the public's health, safety, and welfare. Additionally, the Wetland Policy also states that, "...some activities are exempt from CEQA (e.g., emergency repairs to public services to maintain service, some commuter and regional transportation projects, and other activities)." It should be noted that operation and maintenance of existing publicly owned infrastructure,

such as flood protection and water supply facilities; roads; and bridges, is vital to the public's health, safety, and welfare and therefore these facilities should be specifically exempt from the proposed actions of the Wetland Policy.

5. Page 15 of the Wetland Area Definition and Delineation Section lists 3 proposed conditions that would define an area as a wetland under normal circumstances. This broad definition of a wetland will have significant adverse impacts on public/water agencies' abilities to maintain infrastructure that is not considered a wetland traditionally yet meets the defined conditions (e.g., spreading grounds, detention basin, etc). The Wetland Policy's definition of wetlands should exclude areas within publicly owned infrastructure, or the CEQA analysis must include the impacts, including those to the public's health and safety, associated with deteriorating infrastructure or the elimination of the benefits associated with that infrastructure. The wetland definition should ensure that wetland protection will not come at the expense of the public's health, safety, and welfare.

6. Page 17 of the Areas and Activities Excluded From Project Requirements Section describes areas and activities that would be excluded from the Wetland Policy requirements, such as for constructed wetlands, which can comply with applicable WDR's or waivers of WDR's. A more precise definition of what can be considered a constructed wetland should be included in the Wetland Policy. Additionally, the Wetland Policy should also detail the process of how to obtain a WDR waiver for a constructed wetland. We recommend that flood control facilities that have been converted into multi-beneficial facilities, such as a constructed wetland that has recreational and habitat components, be considered constructed wetlands that can be exempt from the Wetland Policy.

7. Page 25 and 31 of the Environmental Impacts Section states that air quality and greenhouse gas emissions associated with the regulations of the Wetland Policy will be "Less Than Significant With Mitigation Incorporated". This discussion is limited to the potential impacts of the projects that would need State permits. However, considering the broad definition of wetlands to include un-vegetated areas, the proposed wetlands policy may have significant impacts on certain public/water agencies' abilities to maintain publicly owned infrastructure (e.g., debris inlets, debris basins, channels, reservoirs, road culverts, etc), which could potentially impact traffic patterns to the point that air quality is affected and greenhouse gas emissions increased. The potential impact rating for this category should be changed to "Potentially Significant Impact."

8. Page 37 of the Environmental Impacts Section states that Hydrology and Water Quality impacts associated with the regulations of the Wetland Policy will be "Less Than Significant With Mitigation Incorporated." The initial study also states that, "...protecting stream and wetlands would recharge alluvial aquifers during periods of high precipitation or flow...the root channels and biopores of stream

and wetland system vegetation also increase the percolation rates of soils to allow for efficient infiltration and drainage, which would typically result in a net increase in groundwater recharge." Some of this benefit may be offset by the nature of the hydric soil, which by being constantly wet can be expected to have many pores in the soil that are already filled, thus blocking or slowing down infiltration. The percolation capacity of many groundwater recharge basins is maintained or restored by the removal of accumulated silt and opportunistic vegetation and then by scarification. This process results in higher percolation rates in these basins than in natural wetlands. Considering the proposed broad definition of wetlands to include un-vegetated areas and the lack of distinction between accidental wetlands and natural wetlands, the proposed Wetland Policy itself may have significant impacts on the public/water agencies' ability to maintain groundwater recharge rates and volumes, which would impact water supplies. In Los Angeles County, this presents a serious issue since it receives one third of its water supply from groundwater and is subject to increased restrictions on imported water deliveries due to environmental restrictions imposed at the source areas.

9. Page 37 of the Environmental Impacts Section states that potential placement of housing in 100-year floodplains, or exposure of people or structures to flooding hazards and mudflow with the proposed wetlands policy will be "Less Than Significant with Mitigation Incorporated." The discussion is limited to the potential impacts of new development projects. However, maintenance of existing flood and debris protection facilities may also be subject to the proposed Wetland Policy, especially considering the proposed broad definition of wetlands. The Wetland Policy itself thus may have significant impacts on the public/water agencies' ability to maintain flood and debris protection facilities. Even with the imposition of Low Impact Development requirements and other policies on new developments to reduce increases in runoff, many flood and debris protection facilities still need to have the capacity to take in existing volumes of runoff. The proposed policy will likely interfere with the maintenance of these facilities. The potential impact rating for these issues should thus be changed to "Potentially Significant Impact."

10. Page 47 of the Environmental Impacts Section states that the proposed project will not cause direct impacts to public services and that the impacts due to the proposed Wetland Policy will be "Less Than Significant with Mitigation Incorporated." As stated above, the proposed policy and regulations may have significant impacts on the public/water agencies' ability to maintain infrastructure, which can lead to hazardous road or flooding conditions and may require increased efforts and responses (e.g., traffic control, notifications and evacuations) from police and fire entities. The potential impact rating for these issues should thus be changed to "Potentially Significant Impact."

11. Page 49 of the Environmental Impact Section states that the proposed project's impacts on transportation and traffic patterns will be "Less Than Significant with Mitigation Incorporated." The discussion is limited to the impacts from the construction projects subject to State permits. However, as stated above, the proposed Wetland Policy may have significant impacts on public/water agencies' abilities to maintain infrastructure such as roads and flood and debris protection facilities. Deteriorating roads or non-functioning flood/debris protection facilities can result in road hazards or traffic impacts. The potential impact rating for this issue should thus be changed to "Potentially Significant Impact."

12. Page 52 of the Environmental Impact Section states that the proposed policy's potential for requiring or resulting in the construction of new storm water drainage facilities or expansion of existing facilities is "Less Than Significant with Mitigation Incorporated." The discussion appears to be limited to the impacts from construction associated with new development. However, the proposed Wetland Policy may result in the public/water agencies having to expand existing drainage facilities if the agencies are not allowed to remove vegetation to maintain the facilities' original design capacity. The potential impact rating for this issue should thus be changed to "Potentially Significant Impact."