

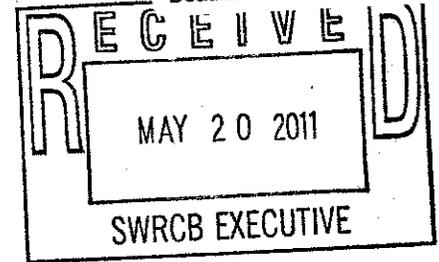


MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

Public Cmt./Wrkshp (1/31 & 2/8)
CEQA Wetlands Policy & Reg
Deadline: 5/20/11 by 12 noon



May 20, 2011

Via Electronic Mail
commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Dear Ms. Townsend

Comments on the
Notice of Preparation and Initial Study for Wetland and Riparian Area Protection Policy

The Metropolitan Water District of Southern California (Metropolitan) has reviewed the Notice of Preparation (NOP) and Initial Study (IS) for the Wetland and Riparian Area Protection Policy (Project). The State Water Resources Control Board (SWRCB) is the Lead Agency for the Project. The purpose of the Project is to protect all waters of the State, including wetland areas and waters of the United States from dredge and fill discharges. The Project is specifically intended to fill the gaps in protection for these waters caused by recent Supreme Court decisions.

Metropolitan is a public agency and regional water wholesaler comprising 26 member public agencies serving more than 19 million people in six counties in Southern California. Metropolitan operates and maintains water treatment, conveyance, and storage facilities throughout Southern California. Metropolitan provides these comments as a public agency that could potentially be affected by implementation of the Project.

Metropolitan is pleased to submit comments for consideration by the SWRCB during the public comment period for the NOP. Because the draft Environmental Impact Report (DEIR) will evaluate the Project at a programmatic level, information on future specific projects which may be permitted under the project are not discussed. Specific draft regulations are also not included in the NOP/IS. In the absence of more detailed information on the Project, Metropolitan is providing more general comments at this time.

General Comments

While Metropolitan understands the goal of the SWRCB in promulgating these regulations is to fill the gap in protection for California wetlands, Metropolitan is concerned that the Project has the potential to result in regulations that are duplicative and inconsistent with current California Department of Fish and Game (CDFG) Section 1600 and U.S. Army Corps of Engineers (Corps) Section 404 regulations. Metropolitan is concerned that the Project will dramatically impact the

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schedule and costs for permitting, as wetlands would now be subject to three separate and distinct sets of regulations and jurisdictions, each with their own separate mitigation and documentation requirements. To avoid this duplication, Metropolitan recommends that SWRCB staff coordinate with these other sets of requirements, as they develop the regulations.

CEQA-Related Concerns

Metropolitan offers the following comments on content of the DEIR:

1. The NOP/IS does not include text of the proposed regulations, and there is insufficient detail to adequately assess potential impacts from the current Project proposal. When the text of the draft regulations is released, including mitigation requirements, Metropolitan will provide additional comments.
2. Although the NOP/IS describes this as a programmatic-level EIR, and does not provide the proposed regulations, the Initial Study nevertheless reaches specific conclusions regarding significance of impacts of the Project. These premature conclusions usurp the ability of local Lead Agencies to reach their own determinations regarding appropriate thresholds and levels of significance for future specific projects under their consideration. It also negates the ability of these Lead Agencies to make findings of over-riding considerations for these impacts, were they to find that mitigation would not be feasible. Examples of this are:
 - a. Aesthetic resources, where the NOP/IS indicates that the State Water Board will dictate to local agencies that construction equipment parked on a public street is a significant visual impact., and
 - b. Biological resources, items e-f, where the NOP/IS indicates that "*future actions ... will be required not to conflict with any local policies ... [and] any [HCPs].*"

Metropolitan believes these conclusions are inappropriate for this level of programmatic analysis, and should be left to the discretion of local lead agencies in their evaluation of specific projects.

3. The NOP/IS indicates that only Phase 1 will be addressed in the programmatic EIR. Metropolitan respectfully disagrees with this approach, and believes that CEQA requires consideration of the whole of the proposed activity. At the very least, the DEIR should address the cumulative effects of subsequent phases to allow for an assessment of potential impacts.
4. The NOP/IS does not describe any alternatives to the proposed Project. The programmatic DEIR should consider alternatives to the proposed regulations, including retention of the wetlands definition that is currently in use.

General Regulatory Concerns

1. Subsequent phases of the proposed policy will address riparian habitat, and Phase 1, which is evaluated in this NOP/IS, would consider state and federally-listed species when issuing a permit. There is considerable overlap with the CDFG Section 1600 program for both these resources. Both programs would address state-listed species and riparian habitat. However, the policies would not overlap in some areas. Metropolitan believes it is counter-productive and inefficient to have multiple state agencies oversee the same resources in this manner.
2. The NOP/IS indicates that wetlands delineation methodology under the Project would be similar to that currently in use for Section 404-regulated wetlands; however, the definitions of wetlands would be different. Where the definitions differ, the State Water Board should provide methods to make those delineation determinations. Metropolitan requests that the DEIR describe and evaluate these methods.
3. Metropolitan understands that SWRCB is promulgating this regulation to fill an alleged gap in federal enforcement of the Clean Water Act. However, the federal U.S. Environmental Protection Agency (EPA) recently released a draft guidance document on wetlands regulation. Public comments are due July 1, 2011, and Metropolitan recommends that SWRCB consider the final EPA guidance before it prepares draft regulations. Moreover, Metropolitan requests that SWRCB ensure that the state wetlands policy does not conflict with the federal policy, and Metropolitan questions whether any gap will exist after promulgation of a federal standard or whether SWRCB will have any jurisdiction to adopt a policy that conflicts with the federal guidelines. Metropolitan is concerned with duplicative, conflicting policies and asks the SWRCB to address this issue in any future actions on this matter.

We appreciate the opportunity to provide input to your planning process and we look forward to receiving the DEIR for this Project. Metropolitan would also appreciate the opportunity to participate in any stakeholder groups that the SWRCB convenes to assist in development of regulations under the Project. If you have any questions, please contact Dr. Marty Meisler at (213) 217-6364.

Very truly yours,



For John Shamma
Manager, Environmental Planning Team

MM:rdl

(J:\Environmental Planning&Compliance\COMPLETED JOBS\May 2011\Job No. 2011052001)