

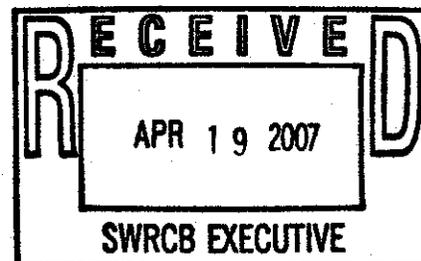


CALIFORNIA FARM BUREAU FEDERATION

GOVERNMENTAL AFFAIRS DIVISION
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April 18, 2007

Song Her, Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



Re: CEQA Scoping Comments – Proposed Wetland and Riparian Area Protection Policy

Dear Ms. Her:

California Farm Bureau Federation is the state's largest general farming organization, representing over 91,000 individual members of its 53 member County Farm Bureaus. Farm Bureau joined a coalition letter on April 18, 2007, expressing some of its concerns in the scoping process for the proposed Wetland and Riparian Area Protection Policy. As an individual entity, the Farm Bureau is pleased to present the following additional comments on the scoping document.

1. Several of the Alternatives Involve Regulatory Overlap

Many of the activities and impacts that may be regulated under the various alternatives are already regulated directly or indirectly in various ways by the Regional Boards through TMDL implementation plans, NPDES permits, and waste discharge requirements or conditions of waivers thereof, and by other state and federal agencies including the Department of Fish and Game, the Department of Forestry and Fire Protection, various local governments, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration Fisheries. There is significant regulatory overlap and duplication at least implied in several of the alternatives, as well as a resulting potential for significant conflict and inconsistency for those required to comply. The Board should carefully consider whether such overlap, duplication, and potential for conflict and inconsistency are wise uses of the Board's limited resources, and the environmental document should thoroughly explore this existing baseline regulatory regime as part of the "no action" alternative.

2. Several of the Alternatives Go Beyond "Filling the Gap" in Wetland Protection, and May Impermissibly Regulate Land Use

Alternatives 3 and 4 dramatically exceed the recommendations of the Board's "2004 Workplan: Filling in the Gaps in Wetlands Protection" and subsequent guidance provided to the Regional Water Quality Control Boards on the subject of regulating those isolated wetlands that the Corps of Engineers declined jurisdiction over in the wake of the United States Supreme Court's 2001 decision in the *Solid Waste Agency of Northern Cook County* case. The environmental document should thoroughly explore this previous direction in its discussion of the alternatives.

In addition, to the extent that Alternatives 3 and 4 may go quite beyond regulation of the impacts of dredge or fill materials to wetlands and regulate activities on "riparian" lands, including what the scoping document enumerates as "land and vegetation clearing activities" and "hydromodification", these alternatives may exceed the Board's authority under the Water Code if there are not direct impacts to the waters of the state at issue. Rather, these alternatives may put the Board in the position of regulating land use activities that are quite remote from traditional water quality concerns, and may impermissibly intrude upon local authority over land use.

3. Impacts to, and Conversions of, Existing Land Uses and other programs Must be Considered

The environmental document should address the individually significant and cumulative effects of land use conversions that could result from implementation of the alternatives. Among the effects that will have to be analyzed under the range of alternatives are the potential impacts to grazing, vineyard and orchard cultivation, timber harvest, development of agri-tourism and other agricultural value-added facilities, maintenance of roads and stream crossings, environmental restoration projects, surface water diversions and groundwater production, and a variety of other actions on farms and ranches and related businesses in the State. The degree of impact on these activities will largely be a function of how extensively the Board define the geographic or physical scope of wetlands, flood plains, and riparian areas that will be protected by the policy.

Our members have particular concerns over the potential for policy alternatives to interfere with, or otherwise impact, routine maintenance of rivers, creeks and streams, as well as adjacent riparian areas, resulting in a loss of flood capacity and loss of recharge as riparian habitat and non-native species are potentially allowed to flourish in our state's rivers, creeks and streams and their adjacent riparian areas. The proposed alternatives could also hamper farmers' and ranchers' ability to maintain riparian habitat on their private property for food safety or other purposes.

4. An Exemption for Normal Farming Activities Should be Considered

The Board should also consider the degree to which the policy will restrict the economic use of existing farm and ranch and timber properties, potentially driving up costs of doing business and forcing those property and business owners to convert those lands to more intensive uses that will produce sufficient economic returns to justify continued operation and ownership of those properties and businesses. A rancher who is

otherwise happy to be a rancher is more likely to become a viticulturalist or developer in the face of regulatory obligations that impose costs and restrictions that require greater income and hence more intensive land uses. This is not to question the legitimacy of any land use, but simply to identify a potential unintended impact of some of the alternatives.

A potential component of a policy alternative that might address this concern would be an exemption in the policy for normal farming activities. This would be consistent with longtime application of the federal Clean Water Act. Such an exemption could contemplate not only a waiver of WDRs for such normal farming activities, but also direction to ensure that application of beneficial use designations do not impact those activities and associated receiving waters.

We look forward to further discussions with the Board on this proposal, as well as review of the environmental document.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'C. Scheuring', with a stylized flourish at the end.

Christian C. Scheuring, Esq.
Director, Water Resources