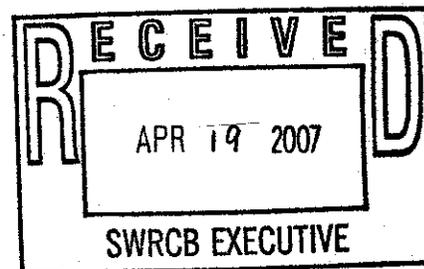


Wetland/Riparian Policy
Deadline: 4/19/07 12 noon



April 19 2007

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



Subject: Southern California Edison Company Comment Letter -
Wetland and Riparian Area Protection Policy

Dear Song Her:

In March 2007, the State Water Resources Control Board (State Water Board) issued an Informational Document regarding public scoping meetings for a Proposed Wetland and Riparian Area Protection Policy (Policy). Southern California Edison Company (SCE) understands the need for the state to protect important wetland and riparian habitat. SCE owns and operates over 20 hydroelectric projects and thousands of miles of transmission and distribution lines in California that help us serve electricity to over 4 million customers throughout a 50,000 square mile service territory. Our electric utility operations bring us into contact with wetlands and riparian areas on a regular basis. To perform necessary work on our electric utility infrastructure, SCE obtains authorizations from a variety of federal and state regulatory agencies, such as the California Coastal Commission, the California Department of Fish and Game (CDFG), the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and of course, the State and Regional Water Boards. Thus, SCE has a strong interest in any regulatory process or policy that addresses the protection of wetlands and riparian areas.

1. Need for Statewide Consistency

The State Water Board Informational Document states that the proposed Policy is needed to address three main areas of statewide concern: (i) lack of clarity in existing regulations that protect wetland and riparian areas, (ii) lack of statewide consistency in the definition of wetlands and riparian areas, and (iii) lack of statewide consistency in definitions of beneficial uses for wetlands and riparian area functions. Yet, the Policy would only be binding upon the State Water Board, not the other state and federal agencies that also regulate wetlands and riparian areas, including the Regional Water Boards. Moreover, the various governmental agencies have different legal mandates that each must follow when implementing statutes and regulations that may result in control over wetlands and riparian areas. If the State Water Board Policy is truly going to create statewide consistency in this area, then the Policy must first consider the different state agencies and the various statutory schemes that play a role in wetland and riparian area regulation. A comprehensive Policy would show how the existing state agencies regulate wetlands and riparian areas and clearly identify any gaps in that process.

P. O. Box 800
2244 Walnut Grove Ave.
Rosemead, CA 91770

Clerk to the Board
Page 2
April 19 2007

For instance, as written, the Informational Document does not discuss the potential for overlapping regulation by the State Water Board and the CDFG. Yet, the Policy could easily create regulatory requirements to be implemented by the State Water Board that are different from and conflict with the CDFG regulatory mandate. This would make permitting projects more complicated and would likely make compliance with such conflicting permit requirements more difficult. Thus, the State Water Board should coordinate this effort closely with other state and federal regulatory agencies and should initially create a matrix of the various laws and regulations that address impacts to wetlands and riparian areas. Only after such a step can the State Water Board then attempt to bring statewide consistency to wetland and riparian area protection.

2. Definitions Within the Policy

The Informational Document appears to have already concluded that the definition of "riparian" areas used under the Federal Clean Water Act is inaccurate and that "most riparian areas do not meet the federal wetland criteria and are not located below the ordinary high water mark". The Informational Document then explains that the State and Regional Water Boards protect these riparian areas to protect water quality and support beneficial uses. However, the proposed Policy does not (i) provide support for a definition of "riparian" outside the ordinary high water mark, or (ii) explain how the State Water Board would have authority over an area outside the ordinary high water mark of state waters unless the activity would impact the quality or beneficial uses of state waters.

The Informational Document criticizes Alternatives 2 and 3 as not addressing the lack of consistency in the definition of beneficial uses and the requirements for evaluating wetland and riparian area conditions. Alternatives 2 and 3 could be expanded, or other alternatives added, to provide that beneficial uses would be defined in the same manner throughout the state. There is nothing inherent in creating these definitions that could not be accomplished under the use of existing California Water Code authorities and regulatory programs. The same can be said for developing a statewide consistent definition of wetlands and riparian areas. The Policy seems to take the position that only a significant expansion of the State Water Board's exercise of authority will address these two issues. That is not necessarily the case. If the State Water Board were to develop definitions of wetlands and riparian areas that are within its existing jurisdiction, the State Water Board could attempt to achieve consistency throughout the state using those definitions. This would, of course, entail significant discussions with the other state and federal agencies that regulate activities in wetlands and riparian areas to avoid duplicative and unnecessary regulation.

3. Development of Alternatives

The State Water Board identifies four alternatives for evaluation in the development of its Policy. As drafted, it seems that only Alternative 4 was crafted to meet the State Water Board's goals. SCE recommends that the State Water Board either amend alternatives 2 and 3 or add additional alternatives that would present the State Water Board with more options for achieving its objectives. For example, none of the alternatives would impose a requirement on the Regional Water Quality Control Boards to follow the final Policy. At least one alternative should require Regional Boards to amend existing basin plans to be consistent with any new Policy. Otherwise,

Clerk to the Board
Page 3
April 19 2007

statewide consistency would be an illusion if Regional Boards were not required to follow the Policy.

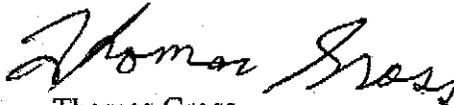
Another example for an alternative comes from the State Water Board's 2006 study of permitted wetland impacts and mitigation. The Informational Document indicates that wetland acreage has largely been preserved. Therefore, existing regulatory mechanisms appear to be working as intended. However, the Informational Document also states that wetlands created, restored, or enhanced through mitigation are of lower quality than natural wetlands. Thus, the State Water Board should consider the reasons behind the lower quality and take steps to ensure that created, restored, or enhanced wetlands will function appropriately.

4. Statutory Authority

The Informational Document does not identify those areas where the State Water Board currently does not have jurisdiction to regulate activities that may impact wetland and riparian areas. Instead, the proposed Policy implies that the State Water Board has the authority under California law to implement Alternative 4. However, the Informational Document does not provide the necessary support to show that the proposed Policy may be implemented without statutory changes to the California Water Code.

SCE requests that any future Policy for the protection of wetlands and riparian areas address the issues discussed above. SCE strongly encourages the State Water Board to consider the best mechanism for the efficient, non-duplicative protection of wetlands and riparian areas. We believe that a step-by-step approach that evaluates all the existing regulatory processes and determines any gaps in those regulatory processes be conducted prior to developing a Policy. SCE appreciates the State Water Board's consideration of these comments and we look forward to working with the State Water Board in the development of the Policy.

Very truly yours,



Thomas Gross

cc: Michael Hertel
Nino Mascolo
David Kay