



Placer County Conservation Program
Gregg McKenzie, Administrator

August 16, 2016

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



Re: Statewide Dredged or Fill Procedures

Dear State Water Resources Control Board:

On behalf of the County of Placer and our Placer County Conservation Program (PCCP) that includes the Western Placer County Conservation Plan, County Aquatic Resources Program, and Placer County In Lieu Fee Program, I offer for your consideration the following comments regarding the June 17, 2016 Preliminary Draft Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Draft Procedures).

The Placer County Conservation Plan and associated programs noted above have been a fifteen year planning effort coordinated with the state and federal wildlife and wetland agencies, including both the State Regional Water Quality Control Board and the Central Valley Regional Water Quality Control Board. The Program will provide an effective framework to protect, enhance, and restore the natural resources in specific areas of western Placer County, while streamlining environmental permitting for Covered Activities. Covered Activities include anticipated future development and growth within the City of Lincoln and unincorporated Placer County, Placer County Water Agency capital projects, as well as the South Placer Regional Transportation Authority's highway and road improvement projects. As described below, the PCCP includes two separate, but complementary, components which support two sets of state and federal permits.

The Western Placer County Habitat Conservation Plan and Natural Community Conservation Plan, referred to as the HCP/NCCP or "Plan". The Plan is a joint Habitat Conservation Plan (HCP) and Natural Community Conservation Plan (NCCP) that will protect fish and wildlife and their habitats, and fulfill the requirements of the Federal Endangered Species Act (ESA), the California Endangered Species Act (CESA), and the California Natural Community and Conservation Planning Act (NCCP Act).

The Western Placer County Aquatic Resources Program referred to as the CARP. The CARP will protect streams, wetlands, and other water resources and fulfill the requirements of the federal Clean Water Act and state laws and regulations (including programmatic Section 401 of the Federal Clean Water Act related to wetlands and water quality). The PCCP will allow the participating agencies to integrate regulatory actions associated with endangered species and wetlands with their local entitlement processing. The PCCP will also allow for more efficient planning and permitting for local infrastructure projects. Lastly, the PCCP will help meet the County's conservation goals by developing a large, managed and monitored reserve area that will provide wetland, stream system, open space, and agricultural conservation in perpetuity.

The County of Placer requests revisions to the Draft Procedures to ensure consistency with and avoid redundant analyses and new regulatory schemes that would otherwise conflict with aquatic resources programs planned or proposed to be integrated with state and federal Natural Community Conservation Plans and Habitat Conservation Plans. The following lines represent areas of concern that should incorporate the work of Placer County and other similar Plans, either previously adopted or in process, throughout the state. The current Draft Procedures seemingly ignore these important tools in the conservation and mitigation of waters of the state.

Lines 1171-1172

(3) Compensatory mitigation projects may also be used to provide compensatory mitigation under the Endangered Species Act or for Habitat Conservation Plans, as long as they comply with the requirements of paragraph (j)(1) of this section.

Concern: Compensatory Mitigation is the only reference to Habitat Conservation Plans in the proposed procedures and ignores the State of California's own Natural Community Conservation Plans and Planning Act and California Endangered Species Act.

Lines 246 - 265

Unless the permitting authority is required to analyze alternatives to a proposed project in order to comply with CEQA, water quality standards, or other requirements the permitting authority shall not require an alternatives analysis if any of the following exemptions apply.

i. The project includes discharges to waters of U.S. only, and the project meets the terms and conditions of one or more Corps' General Permits that has been previously certified by the Water Boards. The permitting authority will verify that the project meets the terms and conditions of the Corps' General Permit based on information supplied by the applicant.

ii. The project includes discharges to waters of the state outside of federal jurisdiction, and the project would meet the terms and conditions of one or more Corps' General Permits that has been previously certified by the Water Boards, if all the discharges were to waters of the U.S. The permitting authority will verify that the project would meet the terms and conditions of the Corps' General Permit(s) if all discharges were to waters of the U.S. based on information supplied by the applicant.

iii. The project inherently cannot be located in an alternate location (e.g., bank stabilization projects). The permitting authority may, however, require an analysis of on-site alternatives that would minimize impacts to waters of the state.

iv. The project would be conducted in accordance with a watershed plan that has been approved by the permitting authority and analyzed in an environmental document that includes a sufficient alternatives analysis, monitoring provisions, and guidance on compensatory mitigation opportunities.

Concern: It is not clear in the proposed language that general permits can be issued in a manner similar to the General Permits that can be issued by the ACOE for HCPs and NCCPs that have an integrated conservation strategy for wetlands. Language should be provided that specifically allows general permits to satisfy the requirements included in the Draft Procedures for HCPs and NCCPs with an integrated wetland strategy.

Each of the following lines relate to the common requirements for a “watershed approach” to compensatory mitigation with the concerns outlined at the end:

Lines 312-318

Type and Location: The permitting authority will evaluate the applicant’s proposed mitigation type and location based on the applicant’s use of a watershed approach based on a watershed profile. If a proposed project may affect more than one watershed, then the permitting authority may determine that locating all required project mitigation in one area is ecologically preferable to requiring mitigation within each watershed, based on watershed conditions, impact size, location and spacing, aquatic resource values, relevant watershed plans and other considerations.

Lines 482-491

Watershed Approach means an analytical process for evaluating the environmental effects of a proposed project and making decisions that support the sustainability or improvement of aquatic resources in a watershed. The watershed approach recognizes that the abundance, diversity, and condition of aquatic resources in a watershed support beneficial uses. Diversity of aquatic resources includes both the types of aquatic resources and the locations of those aquatic resources in a watershed. Consideration is also given to understanding historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources. The watershed approach can be used to evaluate avoidance and minimization of direct, indirect, secondary, and cumulative project impacts. It also can be used in determining compensatory mitigation requirements.

Lines 871-878

Watershed plan means a plan developed by federal, tribal, state, and/or local government agencies or appropriate non-governmental organizations, in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, establishment, enhancement, and preservation. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans.

Lines 910-921

In general, the required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources (including the availability of water rights), trends in land use, ecological benefits, and compatibility with adjacent land uses. When compensating for impacts to marine resources, the location of the compensatory mitigation site should be chosen to replace lost functions and services within the same marine ecological system (e.g., reef complex, littoral drift cell). Compensation for impacts to aquatic resources in coastal watersheds (watersheds that include a tidal water body) should also be located in a coastal watershed where practicable. Compensatory mitigation projects should not be located where they will increase risks to aviation by attracting wildlife to areas where aircraft-wildlife strikes may occur (e.g., near airports).

Concern: The application of the “watershed approach” based on a “watershed profile” for compensatory mitigation should allow sufficient flexibility to reflect landscape-scale conservation plans that provide a thoughtful and strategic approach to watershed protection, but do not include a requirement for all mitigation to occur within the same watershed that impacts occur, especially in areas already built out or where the functions and values of existing waters are otherwise impaired and restoration opportunities are limited. This watershed approach requirement remains unclear in the Draft Procedures. Language should be developed to clarify that comprehensive strategies addressing both aquatic resource impacts and mitigation and biological resources impacts and mitigation can fulfill the requirement for a watershed approach. The procedures should specifically allow the use of watershed approaches developed in HCP and NCCPs, in cooperation with the state and federal wildlife agencies that protect aquatic resources functions and values and beneficial uses of state waters.

Thank you for your consideration of our comments and concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gregg McKenzie', with a long horizontal flourish extending to the right.

Gregg McKenzie
PCCP Administrator

cc: Mr. Chris Beale, Resources Law Group