



**B A S M A A**

Alameda Countywide  
Clean Water Program

Contra Costa  
Clean Water Program

Fairfield-Suisun  
Urban Runoff  
Management Program

Marin County  
Stormwater Pollution  
Prevention Program

Napa County  
Stormwater Pollution  
Prevention Program

San Mateo Countywide  
Water Pollution  
Prevention Program

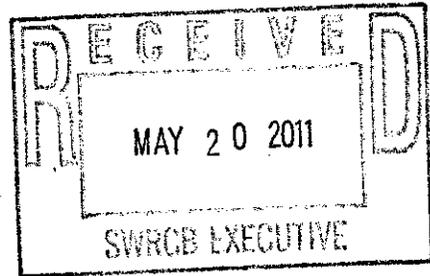
Santa Clara Valley  
Urban Runoff Pollution  
Prevention Program

Sonoma County  
Water Agency

Vallejo Sanitation  
and Flood  
Control District

May 20, 2011

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



**Subject: Revised Notice of Preparation (NOP) for a Draft Program Environmental Impact Report for the proposed Wetland Area Protection Policy and Dredge and Fill Regulations (Project)**

Dear Ms. Townsend:

Thank you for this opportunity to comment on the Revised Notice of Preparation (NOP) for a Draft Program Environmental Impact Report for the proposed Wetland Area Protection Policy and Dredge and Fill Regulations (Project). BASMAA is a 501(c)(3) non-profit organization comprised of the municipal stormwater programs in the San Francisco Bay Area representing 96 agencies, including 84 cities and 7 counties. BASMAA is focused on regional challenges and opportunities to improving the quality of stormwater that flows to our local creeks, San Francisco Bay and Delta, and the Ocean.

After reviewing the NOP/Initial Study Checklist, the BASMAA Board of Directors has decided not to file any new comments at this time, but to instead send this letter to the State Water Board requesting that the attached previous comment letter submitted by BASMAA, dated April 19, 2007 regarding CEQA Scoping Comments – Development of a proposed Wetland and Riparian Area Protection Policy, be incorporated into the record for the Project.

Please contact me at (510) 670-6548 if you have any questions or would like to discuss our comments further.

Sincerely,

James Scanlin  
Chair, Bay Area Stormwater Management Agencies Association

Attachment: BASMAA comments to State Water Board – CEQA Scoping  
Comments - Development of a proposed Wetland and Riparian Area  
Protection Policy (April 19, 2007)

cc: BASMAA Board of Directors  
Catherine Woody, State Water Board

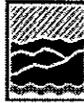
Bay Area

Stormwater Management  
Agencies Association

P.O. Box 2385  
Menlo Park, CA 94025

510.622.2320

info@basmaa.org



B A S M A A

Alameda Countywide  
Clean Water Program

Contra Costa  
Clean Water Program

Fairfield-Suisun  
Urban Runoff  
Management Program

Marin County  
Stormwater Pollution  
Prevention Program

San Mateo Countywide  
Stormwater Pollution  
Prevention Program

San Joaquin Valley  
Urban Runoff Pollution  
Prevention Program

Yuba  
Sanitation and Flood  
Control District

April 19, 2007

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

**Subject: CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy**

Dear Ms. Her:

Thank you for this opportunity to provide comments on the development of a proposed statewide Wetland and Riparian Area Protection Policy. BASMAA is a consortium of eight municipal stormwater programs in the San Francisco Bay Area representing 90 NPDES permitted agencies, including 79 cities and 5 counties. BASMAA is focused on regional challenges and opportunities to improving the quality of urban runoff that flows to our local creeks, San Francisco Bay and Delta, and the Ocean.

BASMAA generally supports and encourages the development of consistent statewide policy to clarify potential gaps in water quality protection regulatory guidance that follows from recent U.S Supreme Court decisions and other regulatory decisions with respect to protection of waters and wetlands in California. *For this reason, BASMAA supports State Water Board Alternative 3 and could potentially be supportive of the more expansive approach suggested in Alternative 4 under certain circumstances* (as described below). However, regardless of which of these Alternatives is pursued, any such statewide policy must be carefully coordinated with Regional Water Board efforts and must take full account of environmental and economic impacts of such guidance.

BASMAA representatives have been tracking the development of a proposed amendment to the Regional Water Quality Control Plan of the San Francisco Bay Region to protect stream and wetland systems (i.e., the "Stream and Wetlands System Protection Policy"). BASMAA has been following this development of the proposed policy by the North Coast and San Francisco Bay Regional Water Boards (Regions 1 and 2) by participating in May 2006 Public Workshops and CEQA Scoping Meetings and submitting written comments on May 31, 2006; and participating in a February 6, 2007 Public Workshop and submitting written comments on March 9, 2007 (see attachments).

#### **CEQA Scoping and Analysis**

The policy's Scoping Document (March 2007) indicates that the State Water Board is considering four alternative approaches to the proposed Wetland and Riparian Area Protection Policy. Based on the Scoping Document (March 2007), it appears that the scope of Alternative 4: Develop a New State Policy to regulate

Bay Area

Stormwater Management

Agencies Association

1515 Clay Street

Suite 1100

Oakland, CA 94612

510.622.2326

www.basmaa.org

## BASMAA comments – CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy

a Variety of Discharges and Activities That Impact Wetlands and Riparian Areas – could be similar in some ways to the scope of the Region 1 and 2 proposed Stream and Wetlands System Protection Policy. Thus, if the State Water Board decides to go beyond Alternative 3 and pursue the more expansive approach implied in Alternative 4, the latter is likely to be based in large part on the work of Regions 1 and 2.

We recognize that the State Water Board has requested that comments on the proposed statewide Wetland and Riparian Area Protection Policy “be limited to identifying the range of actions, alternatives, mitigation measures, and potential significant environmental effects to be analyzed in-depth in the development of these CEQA projects.” Consequently, having developed and submitted comments on the proposed regional Stream and Wetlands System Protection Policy that may be similar to our concerns with respect to the anticipated State Water Board policy, we request that the attached March 9, 2007 letter, including the BASMAA Operational Permits Committee memo be included in the record in this matter.

The lack of specificity of the project description in the policy’s brief Informational Document (Scoping Document – March 2007) makes it very difficult to provide meaningful comments on the appropriate scope of CEQA review and the environmental impacts of the project – obviously not enough to qualify as meeting the requirements for CEQA scoping analysis and comment. Therefore, we expect that the next report will provide the necessary details and specificity of the project. Examples of adverse environmental impacts that might result from the policy and that should be carefully examined in the staff process include:

- Restoring / expanding floodplains and wetlands will increase surface water storage and could exacerbate an existing public health hazard (i.e., West Nile Virus).
- Protection of fish & wildlife habitat may result in conversion of agricultural land – potential alteration in land use.
- Policy may result in reduced road maintenance (in order to reduce sediment discharge) and/or due to already limited funding for road maintenance projects, which may in turn result in changed traffic patterns and reduced public safety.
- Policy could conflict with general plan or zoning, and impact local ordinances and planning efforts. It could have significant land use consequences resulting in impacts to population and housing construction and availability.
- Conversion of man-made channels to natural channels would be expensive, would cause earth displacement, may alter hydrologic patterns, would temporarily disrupt plant and animal life, would create noise and could temporarily impact traffic circulation/patterns.
- Increased maintenance activities relating to pollution control devices (i.e., catch basin inserts, etc.) would cause increased maintenance vehicle traffic, noise and increased air emissions.
- Policy could result in the displacement of existing housing, especially affordable housing located in or adjacent to protected areas (e.g., flood plains, riparian areas, wetlands, etc...).

BASMAA comments – CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy

- Policy could conflict with adopted policies and projects designed to support alternative transportation (e.g., regional pedestrian/bike trails through riparian areas and wetlands)
- Policy could result in geologic problems and hazards to existing structures resulting from landslides, subsidence and soil expansion due to increase surface water inundation and storage.

**State and Regional Water Board Coordination**

Water Boards have noted the following regarding the following proposed policies:

- **Stream and Wetlands System Protection Policy** – Regional Water Boards 1 and 2 (with the expressed purpose to serve as a model for other Regional Water Boards as well as the State Water Board; and to develop statewide definitions for function-based beneficial uses of waters of the state, including water quality enhancement, flood peak attenuation/flood water storage, and wetland habitat)
- **Wetland and Riparian Area Protection Policy** – State Water Board (with Alternative 4, if it is pursued in favor of Alternative 3 or one of the other Alternatives, likely to be based in large part on the work behind the proposed Regions 1 and 2 Stream and Wetlands System Protection Policy)

The concurrent development of the proposed policies raises a major decision for the State Water Board that was recognized in the first workshop on the proposed Wetland and Riparian Area Protection Policy on April 9, 2007 – how should these two potentially overlapping Water Board efforts be coordinated to avoid redundancy or working at cross purposes? We believe the following are quite instructive and have significant direct bearing on the answer:

**Water Boards' Strategic Plan update** – The timing of the State Water Board's decision on the scope of the subject policy coincides with the Water Boards' Strategic Plan update, currently underway. At the State Water Board Strategic Planning Stakeholder Summit on March 12-13, there was general consensus with the following guiding principles on the question of statewide policy and regional variation adopted by the Water Board's Water Quality Coordinating Committee in October 2006:

- On questions of law and overarching policy the State Board should provide guidance and build a basic policy framework from which the regions can appropriately tailor action.
- Water Boards are committed to developing procedures and policies to minimize inappropriate inconsistency.

**San Francisco Bay Regional Water Board's effort** – This Regional Water Board's effort to develop a stream and wetland protection policy started in July 1999 – almost 8 years ago – with work on just the stream protection portion of a policy. We believe the Regional Board's initial focus on stream protection was well advised and that the length of time this effort has

BASMAA comments – CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy

taken is as much a function of its very large and expanded scope and, hence, increasingly complex and controversial nature, as it is any other factor.

BASMAA recommendation

Given the above, and recognizing that the funding for continuing the Regions 1 and 2 effort is limited, BASMAA recommends:

- *In considering which alternative approach to follow, the State Water Board should carefully consider BASMAA's comments in the attached March 9, 2007 letter regarding Policy Need, Scope, and Function (pages 1-2)*
- *If the State Water Board decides to follow the approach in Alternative 3 or, especially if it decides to pursue, Alternative 4, that the State Water Board:*
  - *Assume development of the statewide policy as soon as possible from Regions 1 and 2, or in the alternative, provide that the two sets of policies move forward in a carefully coordinated manner so that the State Water Board Policy provides minimum standards and guidance and the regional policies provide implementation/administration of the policies.*
  - *Use the work and institutional knowledge of Regions 1 and 2 as source material for the continued consideration and development of a proposed statewide policy.*

We look forward to the full participation by BASMAA and its member agencies in this ongoing effort directed to this anticipated policy. When the next report is issued and the specifics of the anticipated policy are provided, we will be able to comment more meaningfully on the environmental effects and the substance of the anticipated project. We will continue to work with you on these issues. Please contact me at (925) 313-2373 or Geoff Brosseau (510) 622-2326 if you have any questions regarding our comments.

Sincerely,



Donald P. Freitas, Chair

attachments: BASMAA comments – Development of a Stream and Wetlands System Protection Policy (March 9, 2007)  
BASMAA Operational Permits Committee memo (March 9, 2007)

cc: Tam Doduc, Chair, State Water Board  
Dorothy Rice, Executive Director, State Water Board  
Val Connor, State Water Board  
Glenda Marsh, State Water Board  
Bruce Wolfe, Executive Officer, San Francisco Bay Regional Water Board

April 19, 2007

4 of 5

**BASMAA comments – CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy**

**Dyan Whyte, Acting Assistant Executive Officer; Section Leader – TMDL Section, Regional Water Board**

**Sandia Potter, Acting Assistant Executive Officer; Communications Coordinator, Regional Water Board**

**Tom Mumley, Chief – TMDL and Planning Division, Regional Water Board**

**Shin-Roei Lee, Chief – South Bay Watershed Management Division, Regional Water Board**

**Ben Livsey, Staff – Stream and Wetlands System Protection Policy, Regional Water Board**

**Ann Riley, Watershed and River Restoration Advisor, Regional Water Board**

**Wil Bruhns, Chief – North Bay Watershed Management Division, Regional Water Board**

**BASMAA Executive Board**