

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENVIRONMENTAL ANALYSIS, MS 27
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94274-0001
PHONE (916) 653-7507
FAX (916) 653-7757
TTY (916) 653-4086

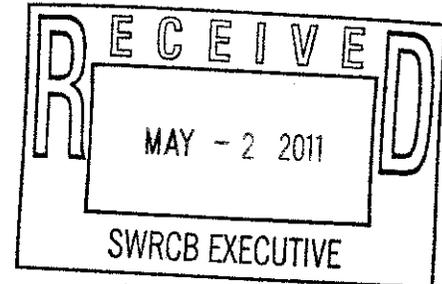
Public Cmt /Wrkshp (1/31 & 2/8)
CEQA-Wetlands Policy & Reg
Deadline: 5/20/11 by 12 noon



*Flex your power!
Be energy efficient!*

April 27, 2011

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



Dear Ms. Townsend:

We appreciate the current opportunity to comment on the Initial Study (IS) for the Wetland Area Protection Policy and Dredge and Fill Regulations (Regulations) as an ongoing part of our participation as stakeholders in the development of the proposed Wetland and Riparian Area Protection Policy. On July 15, 2010, we provided comments on the draft policy of Phase One of the Wetland and Riparian Protection Policy. On September 8, 2008, we provided comments on the Policy to Protect Wetlands and Riparian Areas. On April 9, 2007, we provided comments on the scope and content of the environmental analysis that will be used to support the policy development.

As owner-operator of the State Highway System (SHS), the California Department of Transportation (Caltrans) works to avoid, minimize, and mitigate impacts to waters of the State as part of our project development process. We respect the efforts of the State Water Resources Control Board (Waterboard) to maintain high standards in California for the protection of wetlands and the authority to regulate all waters of the State under the Porter-Cologne Act. We are, however, concerned with the effect this policy will have on the time and cost required to complete our environmental analysis of transportation projects. As a State agency, our actions must comply with State and federal regulations including the Federal Clean Water Act and the Porter-Cologne Act and their implementing regulations.

Though this is a program level analysis, alternatives need to be addressed during the CEQA process. We would like to see the range of options considered by the State Water Resources Control Board to meet the project's purpose of "[protecting] all waters of the State as defined by Water Code section 13050, including wetland areas and waters of the United States from dredge and fill discharges." We believe that there are a number of ways to provide this protection to our waters of the State without creating a regulatory process that is duplicative of existing Federal and State regulations and causing an undue burden on Caltrans, other state agencies, and other stakeholders.

The draft language of the proposed regulations should be included in the project description. While we agree that the potential impacts of the proposed regulations should be analyzed at a program level, the language provided in the project description is vague and does not include key details that are

"Caltrans improves mobility across California"

critical to properly assess the potential impacts of these regulations. Specifically, information regarding additional permitting and mitigation requirements are necessary to address the full impact of these regulations and how they will correspond to existing regulations. Additionally, though Phases 2 and 3 are not developed, we would appreciate the inclusion of conceptual information to give a sense of what the program as a whole will entail.

The lack of a State equivalent to the federal General Permit program could double the hours required to permit wetland impacts for projects with minimal impacts. This information should be assessed and disclosed to the public during the CEQA process. Projects with minimal impacts that fall under the federal general permit program comprise the majority of Caltrans projects and are integral to maintain the safety of the SHS. The IS states that Regulations "include... requirements applicable to discharges of dredged or fill material based on the United States Army Corps of Engineers (Corps) 404(b)(1) guidelines including the recent compensatory mitigation rule...", but there is no mention of whether or not a general permit program, similar to what is identified in the 404(b)(1) guidelines, will be included in these regulations or whether the Regulations will match, or vary from, the permitting and mitigation requirements for the 404(b)(1) guidelines. While we support protecting wetlands and waters of the State, especially those no longer under federal jurisdiction, deviation from the federal permitting and mitigation requirements could impact Caltrans' ability to deliver transportation projects. Given the current fiscal situation throughout the state, this could limit Caltrans' ability to maintain the SHS and deliver transportation projects including safety and congestion relief projects.

Implementation of the new wetlands definition will likely require a substantial amount of time during the environmental review of transportation projects to write a supplemental report to the wetland delineation report currently required to verify wetland areas with the Corps. The additional costs associated with implementing a new wetland definition and the additional permitting requirements should be assessed as part of the CEQA process. The proposed definition for State wetlands is very similar to the federal definition which has gone through years of scientific and regulatory scrutiny. With the methodology provided in the Arid West (September 2008) and Western Mountains, Valleys, and Coast Region (April 2008) regional supplements (regional supplements), the federal definition of wetlands includes all but a very small area of what would be included under the proposed State definition.

In order to fully assess the impacts of a new State wetlands definition, the project description needs to include a conceptual plan for a delineation methodology to address when the State definition differs from the federal definition. Additionally, definitions of the terms used in the proposed State policy should be clearly presented in the project description. While the proposed State definition is very similar to the current federal one, this information we are requesting could greatly affect the impact of the implementation of the new policy.

Jeanine Townsend, Clerk to the Board

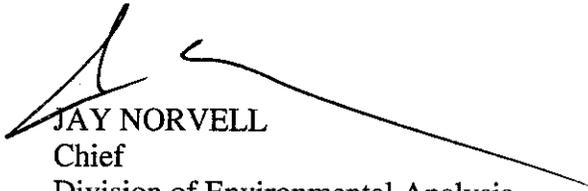
April 27, 2011

Page 3

We urge the State Waterboard to consider the costs of the proposed regulation on Caltrans, other state agencies, and other stakeholders. As we noted in our April 9, 2007 letter and our September 8, 2008 letter, this effort should document the costs of the additional monitoring and mitigation required. These cumulative costs should then be compared with the benefits.

If you have questions regarding these comments, please contact Gregg Erickson at (916)654-6296, or Rebecca Loeffler at (916)651-6117. As Caltrans will be CEQA lead agency for many projects under the jurisdiction of the proposed policy and regulation, we would greatly appreciate being involved in future efforts to develop this policy and regulation.

Sincerely,



JAY NORVELL
Chief
Division of Environmental Analysis