

Department of Water and Power  the City of Los Angeles

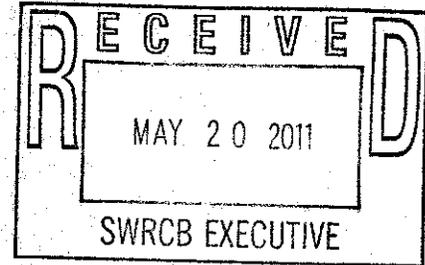
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May 20, 2011

Ms. Jeannine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, Sacramento, California 95814



Dear Ms. Townsend:

Subject: Comment Letter - CEQA - Wetland Area Protection Policy & Regulations

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the CEQA Initial Study (IS) for the Wetland Area Protection Policy and Regulations (hereafter referred to as the Project). LADWP believes that a policy that promotes consistency among the regional boards' handling of wetlands is important to help ensure effective but feasible environmental protection. However, LADWP has significant concerns which are listed below.

The proposed California wetland definition allows a deviation from the Federal definition. The proposed definition from the Technical Advisory Team (TAT) from 2009 is:

An area is wetland if, under normal circumstances, it

- 1) is saturated by ground water or inundated by shallow surface water for a duration sufficient to cause anaerobic conditions within the upper substrate;
- 2) exhibits hydric substrate conditions indicative of such hydrology; and
- 3) either lacks vegetation or the vegetation is dominated by hydrophytes

The current federal definition: "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas." (33 C.F.R. § 328.3(b); 40 C.F.R. § 122.2.)

Thus the proposed California definition includes areas that have no vegetation due to arid or saline conditions.

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LADWP understands that the following areas and activities would be excluded from the requirements of the Project:

- Prior converted cropland. Prior converted cropland (PCC) refers to wetlands that were converted from a non-agricultural use to cropland prior to December 23, 1985.
- Constructed wetlands. A constructed wetland is an artificial wetland that is placed in an area where a wetland did not exist before, and which is specially engineered to obtain specific services, such as wastewater treatment, surface water drainage, or agricultural water supply. These "constructed" wetlands are valued for the services they provide and they are actively maintained to provide them. Owners or operators of constructed wetlands may be exempted from the wetlands regulations or Policy if they comply with applicable Waste Discharge Requirements (WDRs) or waivers of WDRs.
- Activities that are described in Clean Water Act section 404(f)(1)(A)-(F), as listed below:
  - (A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
  - (B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;
  - (C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;
  - (D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;
  - (E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;
  - (F) resulting from any activity with respect to which a State has an approved program under section 208(b)(4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307 [TOXIC AND PRETREATMENT EFFLUENT STANDARDS]).

LADWP is also aware that any construction, dredging, or filling activities that would affect beneficial uses to navigable waterbodies would require a permit.

LADWP **supports** the need to protect isolated wetlands and wetlands that do not contain vegetation at some times during the year where beneficial uses are affected, as long as there are no deviations from current delineation procedures found in the U.S. Army Corps of Engineers (USACE) delineation manuals or supplements. LADWP also supports the exclusions to the Project and future regulations as detailed above. However, LADWP is concerned that a new State definition changes the procedures described in the delineation manuals and supplements or allows those procedures to be disregarded. The new definition will also change mitigation procedures.

### New Definition Concerns

The new wetlands definition in effect changes the way the delineation manuals will be used, because it allows or even requires a delineator to ignore the occurrences when a wetland has no vegetation, a situation not allowed by the delineation manuals. Although the policy states that the USACE delineation manuals will be "used," the wetlands delineator will need to disregard procedures specified by the delineation manuals and supplements in order to comply with the "lacks vegetation" portion of the definition.

The State's guidelines for delineation should correspond with the USACE guidelines. The USACE has released several regional supplements in recent years as part of a nationwide effort to address regional wetland characteristics due to differences in climate, geology, soils, hydrology, plant communities, etc. that are important to the identification and functioning of wetlands. These regional supplements recognize that all wetlands are not equal. California has two regional supplements that address very specific field conditions characteristic to the west – LADWP uses the Arid West Supplement (2008) for lands in the Eastern Sierra and there is also a Western Mountains Supplement (2010) that covers Northwest California and the Bay Area.

Because the regional supplements cover various types of wetlands, including those that are isolated or have problematic hydrophyte vegetation characteristics, there is no need to modify how the delineation manuals or how the supplements will be used by changing the definition of wetlands.

The California definition also uses the word "substrate" instead of soil. This is another example of a significant deviation from the USACE delineation manuals.

There may also be some USACE procedures that are altered arbitrarily but are not specified in the IS. The Technical Advisory Team uses a definition of hydric

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conditions that is different from the USACE. From the Technical Memorandum #2, "For the purposes of this definition, the minimum duration of saturation, flooding, or ponding required to form anaerobic conditions in the upper substrate is identified as seven consecutive days during the growing season. This deviates from the delineation manual, which requires specific indicators of hydric soil.

Recommendation:

LADWP recommends that the State Water Resources Control Board (SWRCB) not change the proposed wetlands definition but create a task force or stakeholder group to study whether or not isolated wetlands or other wetlands not covered by the Federal definition need to be included as separate categories of wetlands. However, any new definition must not allow changes in USACE delineation procedures that result in contradictory results. In particular, the "lacks vegetation" requirement should be deleted.

Recommendation:

Although LADWP does not support changes to the delineation procedures, the SWRCB should perform an analysis to identify all of the deviations of the procedures in the wetland delineation manuals that would result from any new wetlands definition, so the public can more clearly identify potential impacts caused by the Project.

Mitigation

LADWP is concerned that since wetlands no longer absolutely require vegetation according to the State definition, that mitigation for "no net loss" of wetlands may require vast areas of non-vegetative land to require mitigation, such as dry lake playas, even though the USACE will not exercise jurisdiction as a Waters of the U.S.

Recommendation:

As mentioned above, SWRCB should delete the "lacks vegetation" requirement from the wetlands definition. Problematic sparse amounts of vegetation can be properly handled via the USACE Arid West supplement.

A Better Description of the Wetland Strategy is Needed

The IS mentions that there will be three Phases, however does not mention even in outline form what Phase 2 and Phase 3 are about (there is a hint that Phase 3 will discuss riparian issues).

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Recommendation:

SWRCB should describe the program in better detail and provide examples of deficiencies in the current way wetlands are handled by the Regional Boards.

LADWP understands the value of all wetlands in the State of California, and the importance of preserving these dwindling resources. If there are any questions regarding these comments, please feel free to contact Mr. Clayton Yoshida of the Wastewater Quality and Compliance Group at (213) 367-4651.

Sincerely,



Katherine Rubin, Manager  
Wastewater Quality and Compliance

CY:lr

c: Mr. Clayton Yoshida

