

Heal the Bay

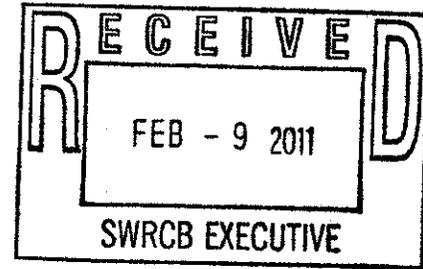
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February 9, 2011

Chair Hoppin and Board Members  
State Water Resources Control Board  
1101 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Re: Comments on CEQA/Initial Study – Wetland Area Protection Policy and Dredge and Fill Regulations**

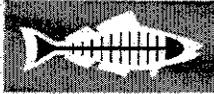
Dear Chair Hoppin and Board Members,

On behalf of Heal the Bay, we appreciate the opportunity to review and provide the following comments on the proposed Initial Study for the proposed Wetland Area Protection Policy and Dredge and Fill Regulations (“Initial Study”). Heal the Bay is an environmental organization with over 13,000 members dedicated to improving water quality in Santa Monica Bay and Southern California coastal waters for people and marine life.

We strongly support the State Board issuing this policy, as wetlands are in desperate need of increased protection. As you know, California has already lost an estimated 91 percent of its wetland habitat, the highest loss rate of any other state, and between 85 and 98 percent of its historic riparian areas. Wetlands provide valuable services such as coastal buffers against storm and flood surges associated with storm events and global warming and habitat for threatened and endangered species. As mentioned in the Initial Study, recent federal court cases have further weakened protection of wetlands in California, thus increasing the need for this policy. Heal the Bay believes that the proposed policy will not result in negative environmental impacts, as it will actually lead to an increase in valuable wetland habitat. Thus, we do not believe an EIR is necessary for this proposed policy. Also while we support this policy, we are concerned by the limited project scope outlined in the initial study. In particular, the scope should go further to include more wetland areas such as constructed wetlands and areas that may not meet all three elements of the definition.

**Constructed wetlands should be included in the project scope.**

As proposed in the Initial Study, constructed wetlands are excluded from the project scope. Instead, the protection of a constructed wetland is left up to the discretion of the respective regional water board through the issuance of WDRs. This is not a protective approach. Wetlands that are properly constructed and maintained can provide critical habitat and water quality benefits. Also, some constructed wetlands are created as mitigation for natural wetlands that have been removed. As such, to not afford these constructed wetlands protection could result in net-loss of wetland areas. The State Board should provide protection to these areas under the



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policy instead of excluding these areas from the project scope. We understand that treatment wetlands may be in a different category due to their need for proper operation and maintenance, but mitigation wetlands should receive protection.

Of note, the policy still contains a three-parameter wetland definition that may exclude certain wetland areas from being protected. By requiring the presence of hydrology and hydric soils, for instance, the definition may not capture important wetland areas in California, such as those in the Mojave Desert where hydrophytes may persist for long periods without hydrological conditions. We urge the State Board to conduct its environmental review using the one-parameter definition used by the U.S. Fish and Wildlife Service, which requires at least one instead of all of the wetland parameters – hydrology, hydric soils, or hydrophitic plants – be present for an area to be considered a wetland.

**A full Environmental Impact Report (EIR) is not necessary for this policy**

The Initial Study finds that the proposed policy “MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required” (Initial Study Page 21). We do not agree that a program-level environmental impact report (EIR) is necessary for the proposed policy. It is clear from the Initial Study analysis that the policy will not have environmental impacts that warrant the creation of a full EIR. In fact, if the goals of the policy are met, we believe it will provide much environmental benefit. In addition, while dredge and fill projects regulated under this policy could potentially cause adverse impacts, these individual projects will have to develop separate EIRs to evaluate their individual impacts and thus should not be included in this Initial Study. In fact, the policy has the potential to lessen the impacts of these individual projects by protecting wetland areas that would otherwise be destroyed by the projects.

We are supportive of the proposed policy because it will help protect California’s precious wetland resources. Heal the Bay urges the SWRCB to move forward with this project and to make it more inclusive of wetland areas currently excluded as outlined above. Thank you for your consideration of these comments. If you have any questions, please contact us at (310) 451-1500.

Sincerely,

Kirsten James, MESM  
Water Quality Director

W. Susie Santilena, MS, E.I.T.  
Water Quality Scientist

To: Jeanine Townsend, Clerk to the Board

Re: **March 15, 2011, Board Meeting, UST Case Closure**  
**908 20<sup>th</sup> Street, Sacramento, CA**  
**USTCF Claim No. 3594**

**Concern over rational provided for case closure based on the Case Closure Summary (CCS).**

The CCS states that a direct push borehole sampled petroleum contaminated groundwater from a depth of 67 ft yet it is not thought to be site related. The rational provided is that the boring log indicated a 14 foot clay layer and you do not know of a driving force to get the hydrocarbons deeper.

No concentrations and no water levels between the two water bearing zones are provided. If the shallow groundwater has a higher potentiometric surface than the deeper zone then there is a downward gradient. Also, there does not appear to be any information concerning the extent of the clay or frequency of sampling in the borehole.

On pg. 6 it states "...hydrocarbons that are light non-aqueous phase liquids need a mechanism to be drawn downward... No such mechanism exists..." Supposedly there is no free product at the site so this statement does not pertain to the site. Dissolved phase petroleum can sink- as is demonstrated by it being found in the deeper zone (regardless of the source area- unless you think a deep source exists). Hydrocarbons have been found at deeper levels around the state, impacting existing wells.

The final paragraph states that standard construction practices and requirements would prevent impacts from the contaminated area. Maybe this refers to sealing the upper annular space, it does not say. However, for private domestic wells and agricultural wells only the top 20 feet are required to be sealed. For community supply wells only the top 50 feet are required to be sealed. However, at this site the contamination is already at 67 ft, so obviously the clay layer and well construction standards would not be protective (whatever the source is). This rational does not pertain to the site and should not be used.