



Mr. Bill Orme
State Water Resources Control Board
Division of Water Quality
PO Box 100
Sacramento, CA 95812-0100
February 26, 2011

Dear Mr. Orme:

Thank you for the opportunity to review the Initial Study for the Wetland Area Protection Policy and Dredge and Fill Regulations. I have not been involved with this proposal, and probably lack some important background information. My comments come from my perspective as a project manager that implements watershed restoration projects (many funded by your agency). From what I could gather reading the Initial Study, I do not support such a policy for the following reasons:

- The description of the need for the policy does not make the case for additional regulatory protection for wetlands. In the area I live and work, I do not see a gap in the regulation of wetlands. The description of the policy does not describe how it would meet the project purpose of providing consistent methods and regulatory mechanisms and a consolidated approach. A consolidated regulatory approach is welcome, but I do not see from the description how the proposed policy would lighten any burden from the extremely onerous existing regulatory framework.
- The background describes the urgency of the situation due to wetland acreages already lost. However, the urgency of the situation is not conveyed because there are no dates as to when the loss of the wetlands occurred. I would suspect that the loss of wetlands in the past decade has slowed to almost no loss due to existing regulations. The description of the current statutory and regulatory framework in the document proves my point that the existing framework is already so onerous that are likely no significant gaps. The existing framework is so detailed that you could not include everything in two tables.
- The role of state and local land use planning should be researched and described more fully in order to adequately assess whether or not the existing framework is effective. The wetland acreages that are allegedly falling through the gaps of regulation may be more logically controlled at a local level. Recent development projects in our county undergo a high degree of scrutiny and protection of watercourses and wet areas. Wetland protection in General Plans needs more thorough analysis.

- Phases 2 & 3 need more explanation. It is difficult to fully comment on this policy with no description of phases 2 & 3, which appear to be connected actions.
- Your example of how the new policy would define wetlands emphasizes my point that this proposed policy is a potential redundancy of existing regulations. Changing "soil" to "substrate" does not warrant the need for a new policy. Likewise, the other example that changing the Corps' recommendation of "problematic hydrophytic vegetation" to a blanket definition of these areas as wetlands disregards local circumstances and special cases. It is better to maintain some level of local discretion than to require blanket definitions.
- In your description of the permitting of discharges, all of the reasons listed to deny a permit, or to mitigate unavoidable impacts seem to already exist under current regulations.
- Activities excluded from the new policy do not include restoration projects. The primary problem I see with the current regulatory environment is that the requirements are the same whether a project seeks to build a shopping mall or seeks to restore a floodplain. There needs to be more regulatory distinction between projects that are conceived to improve wetlands versus other types of activities. I do not see how the proposed policy addresses this issue. And, in fact, by requiring more regulation, this policy may hamper efforts to restore wetlands.
- I find that the checklist discussion confuses the implementation of this policy with actions that would be regulated by this policy. Most of the discussion appears to be about unknown future actions that would be regulated rather than the effect the policy would have on aesthetics, agriculture, forestry, etc.
- Under Biological Resources e) and f), the finding is that there would be no effect on local plans, where I see this policy potentially taking land use decisions out of local control, and placing it into a statewide one-size-fits-all regulatory framework; in fact, that is the stated purpose of the proposal. I don't see how this would not conflict with local policies and plans.
- Under Hydrology and Water Quality the discussion does focus more on the effects of the proposed policy rather than future actions, however, most of the effects that the policy is expected to have on water resources are already effects that exist under existing regulation.

In conclusion, I find that the Initial Study misses the point. The policy would focus on protecting existing areas. There is no mention of restoration of degraded wetlands. The analysis and proposal does not acknowledge the

situation that California currently finds itself in. With the loss of over 90% of wetlands in the state, the urgency is not about protecting the relatively small remnants of wetland that may fall through the regulatory gaps. I see more of an urgency in restoring degraded natural areas that can provide wetland function. The CEQA document does not address the overall assumption that the new policy is based on. How many acres would actually be protected under this new policy that are not already protected under existing regulations? How many acres would not be restored because of the rapidly increasing regulatory burden placed on restoration projects? In my experience, restoration project development costs have skyrocketed just in the last two years, primarily due to increased regulation.

I fully agree that wetlands need protection, and I truly appreciate your agency's commitment to protecting precious water resources. I find, however, that they are already adequately protected by the regulatory approach. The proposed policy is based on yesterday's assumptions that more regulation is needed to protect what we have. I would like to see an analysis on more enlightened state policy that focuses on working with local governments to ensure adequate General Plans and compliance with those Plans, and a policy that promoted restoration of degraded wetlands. This may be the better investment of scant state resources. Consolidation of regulations for restoration would also be welcome, however, it requires collaboration between agencies at all levels of government. More redundant regulation from one agency is not going to get us where we need to go in managing our natural resources.

Thank you for the opportunity to comment. I appreciate your thoughtful consideration on this issue, and I look forward to your response.

Respectfully submitted,

Leslie H. Mink

