

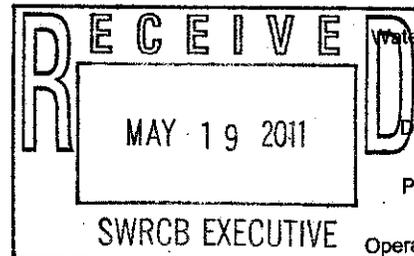


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VENTURA COUNTY WATERSHED PROTECTION DISTRICT

May 19, 2011

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SUBJECT: COMMENTS REGARDING SWRCB WETLAND AREA PROTECTION POLICY AND REGULATIONS, NOTICE OF PREPARATION OF ENVIRONMENTAL IMPACT REPORT / INITIAL STUDY CHECKLIST

This letter is in response to the State Water Resources Control Board's (SWRCB's) Notice of Preparation (dated January 5, 2011) and Initial Study regarding the proposed Wetland Area Protection Policy and Dredge and Fill Regulations. The SWRCB has determined that a program-level environmental impact report (EIR) must be prepared. The Ventura County Watershed Protection District (District) appreciates the opportunity to provide the following comments.

As a matter of introduction, the District has an active capital improvement program in which new flood control facilities are constructed. Our operation and maintenance program is a major public safety component of our program and we currently conduct routine maintenance on over 350 existing facilities county-wide.

The District understands your agency currently has an extensive amount of existing authority under the Federal Clean Water Act (CWA) and state Porter-Cologne Water Quality Control Act. Although the *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (SWANCC) and *Rapanos v. United States* (Rapanos) U.S. Supreme Court decisions have "excluded many wetlands from federal regulation" (p 3), Porter-Cologne fills the void. Existing program implementation could be improved without substantial new policy development.

Generally, the District supports clarification of the regulatory framework for protecting wetlands and riparian areas no longer protected by the Federal CWA. However, we are concerned about the proposed approach. Comments are provided below, organized by Initial Study sections.

Wetland Area Definition and Delineation (p 15)

The District supports reliance on the existing Federal definition of wetlands and the U.S. Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual (and Supplements) as the standard metric for determining compensatory mitigation and compliance with the state's "No Net Loss" policy for wetlands. The Initial Study does

state (p 14) that the USACE Manual, Arid West Region Supplement, and Western Mountains, Valleys, and Coast Region Supplement would be used to delineate wetlands excluded from federal regulation by SWANCC and Rapanos. However, the Initial Study proposes a new wetland definition (p 15). Because the USACE Manual and Supplements are based on the existing USACE wetland definition, it would be unnecessary and confusing to introduce a new, conflicting definition. It is unclear how the new definition would correct existing regulatory loopholes or provide greater protection.

In addition, the District is concerned that replacement of the word "soil" in the existing USACE wetland definition with "substrate" in the proposed definition would result in inappropriate regulation of concrete-lined flood control facilities. Concrete channels with continuous urban runoff can foster vegetation growth through cracks in the concrete or on deposited sediments. To maintain channel capacity, the District periodically removes sediment, debris, and trash from its concrete channels. With the replacement of "soil" by "substrate" in the definition, these channels may be characterized as wetlands, thus generating unreasonable new Porter-Cologne permitting and mitigation requirements. This would be unacceptable, as it would adversely affect the District's ability to fulfill its mission "to protect life, property, watercourses, watersheds, and public infrastructure from the dangers and damages associated with flood and stormwaters."

Finally, the proposed policy focuses on wetlands, which are only a subset of all waters of the state. By emphasizing wetlands, it appears that non-wetland streams excluded by SWANCC and Rapanos would continue to be excluded. It is unclear why the policy emphasizes wetlands and neglects streams with intermittent or ephemeral flows.

Wetland Area Tracking, Monitoring, and Assessment (pp 15 – 16)

The Water Boards would require the use of "standardized practices and methods in all monitoring and assessment activities of surface waters required by permits, waste discharge waiver conditions, and discretionary financial assistance conditions" in accordance with the California Wetlands and Riparian Assessment and Monitoring Program (WRAMP) (p 15).

As previously stated, the District is responsible for maintaining over 350 flood control facilities within Ventura County to ensure public safety. We also maintain, monitor, and report the status of approximately 30 mitigation sites annually. As is common for local agencies throughout the state, the District's budget is very tight. Increased monitoring and reporting requirements, particularly if new protocols could not be completed without extensive training or hiring consultants with specialized knowledge, would represent an unnecessary new burden on existing limited budget and staff resources.

The District regularly applies the line intercept method to quantify native and non-native plant cover and diversity at our mitigation sites. This approach effectively produces the data needed to determine whether a site has met the performance criteria stipulated in our regulatory permits. Additional and more complicated monitoring methods as proposed would not necessarily improve performance and would be more costly.

Permitting of Discharges of Dredged and Fill Material (pp 16 – 17)

The District supports adoption of the CWA Section 404(b)(1) Guidelines with revisions to reflect state authorities and differences between the California Water Code and Federal CWA. However, the District's experience with obtaining 401 certifications is that the local Regional Board (RB) 401 Certification Program is severely understaffed and underfunded, resulting in lengthy permit processing times. For example, the Los Angeles RB had received a District project application in early April 2009, the associated CEQA document was certified in mid-August 2009, and the final 401 certification was not issued until mid-June 2010. Section 65952(a) of the California Government Code, which addresses "Approval of Development Permits," states the following:

Any public agency which is a responsible agency for a development project that has been approved by the lead agency shall approve or disapprove the development project within whichever of the following periods of time is longer:

- (1) Within 180 days from the date on which the lead agency has approved the project.
- (2) Within 180 days of the date on which the completed application for the development project has been received and accepted as complete by that responsible agency.

In the example above, the application was complete on August 13, 2009, but permit processing exceeded the statutory time limit by four months. Given the additional analyses RB staff would need to complete as a result of the proposed wetland policy revisions, it appears even less likely that timely permit issuance could occur. This is particularly worrisome in light of state budget cuts and work furloughs that reduce RB staff resources. We suggest the SWRCB implement measures, such as increasing staff assigned to process 401 certifications, to ensure statutory permit approval times will be met.

The District understands the importance of a meaningful alternatives analysis for projects that cannot avoid discharges of dredge or fill material. We support requirements for meaningful alternatives analyses for most project types. These analyses should also consider the long term costs and benefits of each alternative. However, full 404(b)(1) analyses would not guarantee projects with fewer impacts. In addition, it is unclear whether the proposed program would require such analyses in all cases. For example, under the 404 program, applicants do not prepare such analyses when projects are eligible for Nationwide Permits. We request the SWRCB develop similar general permits for activities with small impacts to state waters.

Areas and Activities Excluded from Project Requirements (pp 17 – 18)

The District appreciates the exclusion of maintenance of currently serviceable structures from the proposed project requirements. However, the statement that "even though a proposed project or activity is excluded from this Project's requirements and a separate dredge and fill permit will not be required, the Water Boards may decide to regulate the proposed project or activity under other WDRs or waivers" (p 18) offers little assurance

of streamlined authorization for routine maintenance activities. The District requests that thresholds triggering other WDRs or waivers be clearly defined in the Areas and Activities Excluded from Project Requirements section. Also, it would be helpful if a full listing of the types of WDRs or waivers potentially applicable to the exempt areas/activities could also be provided for clarity.

Greenhouse Gas Emissions

The proposed intensive wetland area tracking, monitoring, and assessment requirements would generate more site visits to collect increased amounts of data at greater frequencies. It is unclear whether these new requirements would apply to both existing and future projects. This issue would probably not be addressed by individual, project-level CEQA documents. Statewide, this could result in significant, unmitigated greenhouse gas emissions due to increased numbers of vehicle trips.

Requests

1. The District recommends better implementation of riparian and floodplain protection measures for upland development and alteration of land at the staff level to reduce impacts in receiving waters and thereby reduce the need for additional flood control projects. This includes draft CEQA document (EIR, MND/ND) review and comment well before processing a related application for Waste Discharge Requirements or Section 401 Certification.
2. The District requests clarification of the mechanism by which an applicant would obtain authorization for discharges of dredge or fill material in the absence of a Section 404 permit.
3. The District requests clarification of the fee structure of a revised WDR program.
4. The District requests that the existing USACE definition of wetlands be applied in all cases, and the proposed definition be abandoned.
5. The District requests clarification of the reason for emphasizing wetlands and neglecting ephemeral and intermittent streams. Will these types of water bodies be addressed during future policy making?
6. The District requests flexibility and variety among the standardized wetland area tracking, monitoring, and assessment protocols required for demonstrating full permit compliance (e.g., allow application of the line-intercept or other similar methods for this purpose).
7. The District requests sufficient staffing and funding of 401 Certification Programs throughout the state to ensure timely permit processing in compliance with Section 65952(a) of the California Government Code.
8. The District requests that thresholds triggering other WDRs or waivers be clearly defined.

9. The District recommends that the greenhouse gas chapter of the EIR include analysis of the additional travel required to collect increased data at greater frequencies to comply with proposed tracking, monitoring, and assessment requirements. Statewide, the increased travel could result in significant cumulative impacts.

If you have any questions regarding these comments, please contact Gerhardt Hubner at (805) 654-5051 or Gerhardt.Hubner@ventura.org.

Sincerely,



Norma J. Camacho
Director

CC: Gerhardt Hubner, Deputy Director, Water & Environmental Resources
Pam Lindsey, Watershed Ecologist
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