

San Joaquin Hills
Corridor Agency

Chairman:
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Laguna Woods

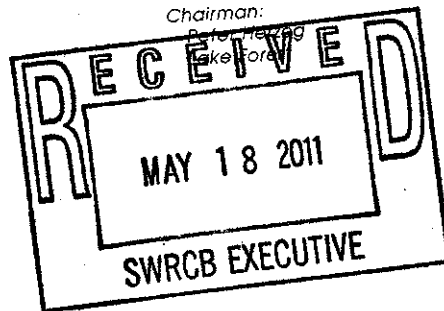


TRANSPORTATION CORRIDOR AGENCIES

Foothill/Eastern
Corridor Agency

Chairman:

Peter Hagg
Lake Forest



May 18, 2011

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100,
Sacramento CA, 95812-2000

RE: Comments on the Revised Notice of Preparation Regarding Environmental Impact
Report / Initial Study Checklist for the Wetland Area Protection Policy and Dredge and
Fill Regulations

Dear Ms. Townsend:

I. INTRODUCTION

The San Joaquin Hills Transportation Corridor Agency and the Foothill/Eastern Transportation Corridor Agency (collectively TCA), respectfully submit the referenced comments on the Revised Notice of Preparation (NOP) regarding the proposed Wetland Area Protection Policy and Dredge and Fill Regulations (Regulations or Project).

TCA are public joint powers authorities comprised of the County of Orange (County) and sixteen cities within the County, which were formed to plan, finance, and build new regional transportation facilities within the County. TCA has planned, financed and constructed 51 miles of new regional transportation facilities since 1986 with a construction cost of \$3 billion. TCA is planning the SR 241 Completion Project (241 Completion) as the final leg of its 67-mile public toll highway system. As planned, the 241 Completion would extend the Foothill Transportation Corridor (SR 241) from Oso Parkway south to Interstate 5 (I-5) in the San Clemente area as a state highway.¹

The 241 Completion is a central component of the regional transportation plans of the Southern California Association of Governments (SCAG) and the San Diego Association of Governments. The SR 241 is needed to: (1) provide an alternative north-south highway route to I-5 in southern Orange County, (2) reduce existing and projected future severe congestion on I-5 in south Orange County, of which almost 75 percent will come from regional traffic in the year 2020; (3) provide an alternative emergency evacuation route in the event of a natural disaster or emergency event at the San Onofre Nuclear Generating Station; (4) reduce congestion on arterial streets in San Clemente, San Juan Capistrano, and Mission Viejo; and (5) implement the transportation element of the South Coast Air Quality Management District Air Quality Management Plan.

In the course of planning and developing the existing 51 miles of public facilities, TCA has

¹ Cal. Sts. & High. Code §§ 300, 541; Cal. Stats. 1988, Ch. 1363, § 2.

Thomas E. Margro, Chief Executive Officer

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worked extensively with federal and state resources agencies with jurisdiction over wetlands and dredge and fill activities or endangered species that utilize such habitats, such as the United States Army Corps of Engineers (Army Corps), the California Department of Fish and Game (Fish and Game), the United States Fish and Wildlife Service (Service) and the Regional Water Quality Control Boards. Since 1990, the TCA has played a leading role in the Natural Community Conservation Plans (NCCP) in Orange County by providing a significant share of funding for the NCCP planning activities, including seventy-five percent of the management endowment for the 38,000 acre Central/Coastal NCCP Reserve System, and by funding the protection, management, and restoration of thousands of acres of habitat, including wetlands.

Since 1995, TCA has implemented 15 different preservation and/or mitigation sites in Orange County to mitigate the effects of building the transportation facilities. Because the regional facilities implemented by TCA tend to be linear facilities which must cross a variety of drainages, streams, and flood control facilities, it is not possible to completely avoid wetlands. Below, we provide a few examples of wetland restoration and enhancement sites to illustrate that TCA has extensive experience with such sites.

The 21-acre Bonita Creek Mitigation Site is located in Newport Beach in Orange County, California. Bonita Creek flows from the San Joaquin Hills, to Bonita Reservoir, to San Diego Creek, and eventually to Upper Newport Bay and the Pacific Ocean. The site stretches from University Drive South to Bonita Canyon Drive, along the west side of the SR 73 Toll Road. The TCA purchased the site, planned and implemented the restoration of Bonita Creek from 1995 to 2001 to re-establish willow woodland, wetland marsh, and upland buffer. The goal of the project was to restore the natural creek and riparian vegetation, and improve wildlife movement within the channel. Biologists, scientists, and engineers began to restore the site at the same time the SR 73 Toll Road was being built in 1995. Today, Bonita Creek is a premier example of riparian restoration.

Another example of a successful mitigation site created by TCA is the Salt Water Marsh Mitigation Site at San Diego Creek. This is a 2.4 acre salt water marsh site that is part of the Upper Newport Bay and San Diego Creek hydrologic system with tidal flow provided to the marsh site by San Diego Creek.

Both of these example mitigation sites met the performance criteria established in the permitting process and both have demonstrated the TCA's experience in successfully implementing wetland habitats that are self-sustaining and used by a variety of wildlife species. We would be happy to provide additional details of TCA's mitigation sites.

TCA's review of the State Water Resources Control Board (SWRCB) materials regarding the Regulations is informed by TCA's decades of experience with both the regulatory process related to wetlands and successful implementation of mitigation sites for projects that will remove wetlands. The following summarizes the TCA comments on the following:

- (1) The level of detail in the NOP is not sufficient to meet basic informational requirements of the California Environmental Quality Act (CEQA). As a result, the project description is flawed and the public cannot determine what the SWRCB is evaluating.

- (2) The SWRCB is proposing a duplicative, inconsistent, and unnecessarily burdensome regulation that does not comply with California law.
- (3) The SWRCB must address in the Environmental Impact Report (EIR) the social and economic effects of the Project.
- (4) The SWRCB has not analyzed alternatives, and has not described adequately a reasonable range of alternatives to the Project.
- (5) By only addressing the first phase of its overall new resource policy, the SWRCB has impermissibly segmented the CEQA analysis.
- (6) The Project is a regulation, and as should be promulgated as such and subject to the appropriate level of CEQA analysis.

Accordingly, TCA respectfully requests that the SWRCB revise the project description to address these concerns and issue a new NOP for public review and comment before it embarks on the preparation of a draft EIR. The CEQA process for the Project is fundamentally flawed unless the SWRCB issues a new NOP that addresses the above issues.

II. ISSUES WITH THE PROJECT DESCRIPTION

A. The Project is Not Described or Defined in Adequate Detail.

The description of the Regulations is inadequate and insufficient. Although we understand that the SWRCB intends to prepare a program EIR regarding the Project, a more detailed and comprehensive explanation of the Project is needed so that the Initial Study can fulfill its purpose under CEQA to "facilitate environmental assessment early in the design of a project". (Cal. Code Regs, tit. 14, § 15063 (c)(4) (hereafter CEQA Guidelines)).

The Initial Study needs to explain the evolution of the Project from the four alternatives described in the SWRCB's March, 2007 Proposed Wetland and Riparian Area Protection Policy (2007 Policy). The Project contemplates new state policies to regulate impacts of dredge and fill material discharges on wetlands and riparian areas in a manner that is more protective than the federal Clean Water Act Section 404 regulations and section 404 (b)(1) guidelines. It appears that Alternative 4 of the 2007 Policy is now contemplated to be "Phase 2" of the Policy (State Water Resources Control Board Resolution No. 2008-0026, page 3).

The Initial Study fails to explain how the current Project relates to the 2007 Policy, and the process and reasoning behind the transition of the 2007 Policy Alternatives into the Project. This failure prevents an adequate evaluation of the Project's development and rationale. Further, it appears that the SWRCB has already selected an alternative (from the 2007 Policy) without considering a reasonable range of alternatives and without considering the environmental and economic effects of the selected alternative.

The Project description is inadequate because the Initial Study does not provide a draft of all elements of the Project. Although the Initial Study contains a draft of the new wetlands definition, it does not contain a draft of the overall policy, or of the proposed permitting guidelines for the issuance of a permit to discharge dredged and fill material. The Initial Study describes the new permit requirements in vague terms, analogizing them to the 404(b)(1) guidelines and providing some general descriptions of the criteria that the Water Boards would use to decide whether to issue a discharge permit. However, these descriptions are not specific enough to allow regulated entities and the public to adequately evaluate the proposed Project, because they do not contain sufficient detail to demonstrate how the Project will change current permitting practices. Before the public can provide meaningful comments and input on the Project, the public must be informed regarding the specifics of the regulatory language being proposed. This is demonstrated by the draft of the new wetlands definition, which highlights how minor changes in regulatory language can significantly affect a policy's scope and importance.

Accordingly, TCA respectfully requests that before proceeding further, the SWRCB issue a complete description of the Project as a whole.

B. The Project Duplicates and is Inconsistent with Existing Regulations.

The Project proposes a policy that is duplicative of federal, state, and regional regulatory schemes that are already in place throughout California and achieve the same or similar objectives. The Project is both duplicative of and inconsistent with existing regional, state, and federal wetlands policies and will impose a major burden on regulated entities. This burden is especially unnecessary in light of the fact that the alleged need for the Project is based on data that are outdated and do not accurately represent the effectiveness of current wetland management and mitigation practices under state and federal law.

1. The Project is duplicative of existing regulations.

The activities and impacts that the Project seeks to address are already subject to regulation. The Water Boards already regulate impacts via TMDL implementation plans, NPDES permits, and waste discharge requirements. Other state and federal agencies also have robust regulatory schemes that address the activities and impacts that would be covered by the Project. On the state and regional regulatory level, these include the California Coastal Commission, the California Department of Fish and Game, the California Department of Forestry and Fire Protection, the SWRCB itself, and the nine regional water boards. Federal regulation is provided by the Corps of Engineers, the U.S. Environmental Protection Agency, the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Forest Service, and the Bureau of Land Management.

Implementation of the Project and its proposed policy would add an unnecessary and burdensome level of regulation to the numerous regulations that are already in place and functioning to protect wetlands and related resources. This point is consistent with the position of the California Department of Transportation position as expressed in its April 9, 2007 comment letter on the 2007 policy. There, the Department pointed out that "[l]ayering a new definition over this [Army Corps wetlands definition] parameter could possibly increase the levels of approval and time, needed for delivery of transportation projects." The Project's

duplication of existing regulations will create additional burdens without providing additional benefits in the form of resource protection.

- a) **The Project will have a detrimental impact on regional planning efforts.**

Because wetlands are a valuable ecological resource, many are already managed or protected in accordance with habitat conservation plans, natural community conservation plans, special area management plans, local coastal programs and forest management plans approved under state and federal law. Implementation of the new regulatory regime proposed by the Project in the context of projects that have already been addressed in these regional plans will create confusion, may contradict adopted plans and create unnecessary regulatory conflicts.

2. The Project is inconsistent with the Army Corps' mitigation rule.

The Army Corps' section 404 Clean Water Act regulations provide a clear hierarchy of wetlands compensatory mitigation priorities. First, "[w]hen permitted impacts are located within the service area of an approved mitigation bank", the mitigation bank approach to compensatory mitigation should be utilized. (33 CFR § 332.3 (b)(2)). Second, "[w]here permitted impacts are located within the service area of an approved in-lieu fee program", the Army Corps regulations favor the use of in lieu compensatory mitigation. (*Id.*, at (b)(3)). Lastly, permittee-responsible watershed mitigation is the last resort, to be used only where the use of a mitigation bank or an in-lieu program is not an option.

The Project favors a watershed-based approach to compensatory mitigation that is inconsistent with the federal Army Corps regulations. By reversing the Army Corps' order of preferred mitigation types, the Project subjects permittees to two different and conflicting wetland mitigation schemes. This inconsistency will create a great deal of uncertainty and confusion. The Project also fails to take advantage of the established Army Corps regulatory process, creating additional economic inefficiency. The EIR should evaluate the manner in which reliance on the existing Army Corps policy and compensatory mitigation practices would meet the project objectives without duplicating existing regulation.

3. The Project is unnecessary.

In addition to being redundant and inconsistent with existing regulatory schemes and policies, the Project is also unnecessary. The need for the Project is premised on studies that are outdated and do not accurately represent the status of California's wetlands and mitigation practices. Significantly, the Initial Study relies on two outdated scientific studies to support its conclusion that new regulations are needed to protect wetlands. For the premise that urgent action is needed to preserve wetlands resources, the Initial Study cites the 1990 Dahl study. The Dahl study is more than 20 years old.

Additionally, the Initial Study cites the Ambrose et al. study, which concluded that compensatory mitigation efforts in California produce low-quality wetlands. However, the Ambrose study relied on data that are up to twenty years old, with a large number of the evaluated projects dating back to the 1990's. Since that time, wetland compensatory mitigation measures have become more sophisticated and effective. Accordingly, the Ambrose study does not adequately

represent the current state of the quality of compensatory mitigation measures. Any EIR that relies on outdated information as the grounds for the Project will be inadequate.

By relying on outdated studies, the SWRCB skews the planning process and presents a less-than accurate picture to the public. Accordingly, TCA respectfully requests that the SWRCB evaluate the latest available data on wetlands mitigation and related issues and base its decisions accordingly.

III. CEQA ISSUES WITH THE PROJECT

A. The CEQA approach is flawed because it is impossible to determine key provisions of the Project.

As discussed above, the Initial Study fails to adequately identify important details and aspects of the Project. From the Initial Study, it is impossible to determine the Project parameters. Because there is no description of the proposed permitting policy, and no general outline of how applicants would comply with the permitting policy, it is impossible to adequately evaluate the possible effects of the Project, and to provide more specific comments.

B. The Initial Study fails to identify the effects of the Project.

One of the purposes of an Initial Study is to "Facilitate environmental assessment early in the design of a project." (CEQA Guidelines, § 15063 (c)(4)). To achieve this purpose the Initial Study must, among other things, identify the environmental effects of the project. (CEQA Guidelines, § 15063 (d)(3)). The impact evaluation is required to analyze all potential impacts, including project-level and cumulative impacts, direct and indirect impacts, and construction and operational impacts. (CEQA Guidelines, Appendix G, ¶ 2).

Here, the Initial Study does not identify the potential effects of the Project. Instead, the Initial Study defers that analysis, and discusses only the potential impacts of projects that would be subject to new permitting requirements. By deferring analysis of the Project's effects, the Initial Study conflates the effects of the Project and the effects of future development activity that will be subject to the Regulations.

1. Economic and Social Effects

The Initial Study fails to adequately discuss the significant economic and social effects that would result if the Project is adopted.

a) CEQA rules on economic and social effects.

The economic and social effects of a project that will have a physical effect on the environment should be evaluated under CEQA. The CEQA Guidelines provide that "economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant." (CEQA Guidelines, § 15064 (e)). "Economic or social effects of a project

may be used to determine the significance of physical changes caused by the project." (*Id.*, at § 15131(b)). Moreover, a physical change on the environment that results from the Project's economic and social effects should be analyzed "in the same manner as any other physical change resulting from the project." (*Id.*, at § 15064 (e)). "When there is evidence... that economic and social effects caused by a project, such as a shopping center, could result in a reasonably foreseeable indirect environmental impact, such as urban decay or deterioration, then the CEQA lead agency is obligated to assess this indirect environmental impact." (*Anderson First Coalition v. City of Anderson*, (2005) 130 Cal. App. 4th 1173, 1182).

Accordingly, "the lead agency shall consider the secondary or indirect environmental consequences of economic and social changes, but may find them to be insignificant. Such an interpretation is consistent with the mandate that secondary consequences of projects be considered." (*Citizens Assn. for Sensible Development of Bishop Area v. Cnty. of Inyo*, (1985) 172 Cal. App. 3d 151, 170) (emphasis in the original).

b) The Project will have significant economic and social effects, which need detailed analysis.

As a result of additional regulation and costs of compliance with the Project, growth pressures will be exacerbated and will force new development into other areas, causing growth-inducing effects to those other areas. This will in turn result in physical effects from development intensification if such growth is ultimately accommodated in other areas. If such growth were not accommodated, then there would be other effects, such as increasing the current housing shortage. Housing costs will also increase in those areas where growth is limited by the Project and its policies. The EIR will need to address these issues in light of the general plans of local jurisdictions and laws requiring local jurisdictions to provide a fair share of housing to address regional housing needs.

The physical effects of the Project on the environment are likely to lead to significant economic and social effects. Accordingly, the economic and social effects will need to be analyzed and mitigated. (CEQA Guidelines, § 15064 (e)).

(1) The Project will impede the development of crucial infrastructure in California.

The Project will make it more difficult to implement regional transportation plans and transportation programs. This effect will occur because the Project will create additional regulatory complexity and modify the process for issuance of a permit to discharge dredged and fill material. These changes will have a direct effect on Caltrans, TCA and every other transportation agency. This is at a time when the infrastructure network in California is in urgent need of investment and improvement. The state estimates that California's population will grow by 30 percent over the next 20 years, and that infrastructure needs at the state level would total \$500 billion during that time, not including local and regional needs across the state. (Little Hoover Commission, *Building California: Infrastructure Choices and Strategy*, (2010), <http://www.publicinfrastructure.ca.gov/page.aspx?o=cabth&s=PIAC&p=475080>. Accessed May 3, 2011).

By making infrastructure development more difficult throughout California, the Project will have major effects on people's access to transportation, regional mobility, air quality and on growth patterns throughout the state. Additionally, by reducing entities' ability to build new transportation infrastructure, the Project will place greater strain on existing infrastructure with attendant mobility and air quality impacts. This will have the additional impacts of increased congestion, air emissions, maintenance costs, and transportation accident-related fatalities. (The Economist, online edition. *America's Transportation Infrastructure: Life in the Slow Lane*. www.economist.com/node/18620944/print. Accessed May 2, 2011).

(2) By adding another level of regulation, the Project will increase the state-wide regulatory burden.

California has one of the costliest comprehensive regulatory schemes in the nation, which subjects regulated entities to multiple levels of regulation. As reported in a recent study commissioned by the state of California, the total cost of California's regulations is almost \$493 billion per year, and results in an employment loss of 3.8 million jobs. (Varshney, S. B., Tootelian, D. H. *Cost of State Regulations on California Small Businesses Study* (2009), available at <http://www.sba.ca.gov/Cost%20of%20Regulation%20Study%20-%20Final.pdf>. Accessed May 9, 2011).

The Project would add to this already-significant burden by creating new and duplicative regulations, subjecting transportation and other economic activities to additional and unnecessary regulations. These regulatory costs would be especially significant because the Project proposes a policy that overlaps with existing federal and state regulations.

C. Issues with the Initial Study's lack of alternatives analysis.

The Initial Study provides no descriptions of alternatives to the Project. This is a major shortcoming that prevents the public from adequately evaluating the proposed action and undermines the Initial Study's facilitation of "environmental assessment early in the design of a project". (CEQA Guidelines, § 15063 (c)(4)). Without a brief description of the alternatives to the Project that will be evaluated in the EIR, a basic and fundamental CEQA concept is ignored. One of the purposes of an EIR is "to identify alternatives to the project." (CEQA Guidelines, § 21002.1 (a)). Because the Initial Study and related materials do not identify the alternatives to be evaluated in the EIR, it is unclear what alternatives are being considered.

1. Alternatives which should be considered.

a) Use of the existing CDFG process.

Among the alternatives that should be considered during this CEQA process is use of the existing California Department of Fish and Game Lake and Streambed Alteration Program. (Fish and Game Code, § 1600 *et seq.*). This program has a decades-long track record of successfully operating to protect the riparian areas that are to be encompassed by the proposed Project. The Lake and Streambed Alteration Program has a documented track record of protecting water quality and conserving wetland resources. As provided in Fish and Game Code section 1600 *et seq.*

An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur:[] (Fish and Game Code, § 1602 (a)).

Accordingly, the Project will overlap Section 1600 agreements and associated mitigation measures and impose duplicative regulations. TCA requests that the SWRCB evaluate the use of the Lake and Streambed Alteration Program as an alternative to the Project. The evaluation of this alternative is required to quantify and evaluate the extent to which the Lake and Streambed Alteration Program address the objectives of the Project.

b) Other alternatives described in the 2007 planning effort

As discussed above in Section II. A of this comment letter, there is no explanation of how the current Project relates to the 2007 Policy and alternatives, or of the evolutionary planning process that led to development of the Project.

Specifically, Alternatives 1 and 2 of the 2007 Policy both have significant benefits in terms of achieving the Project goals without adding redundant and inconsistent regulation. Alternative 1, the No Action alternative would continue to use existing state policies under the California Water Code. During the comment period on the 2007 Policy, a number of parties recommended that SWRCB avoid creating another layer of regulation, and implement a policy that is consistent with the Army Corps' approach. Essentially, the comments submitted expressed support for 2007 Policy Alternative 1.

The Initial Study fails to explain why Alternative 1, and Alternative 2 (which would adopt the federal CWA Section 404(b)(1) guidelines as the state policy for regulating impacts of dredge or fill material discharges on wetlands and riparian areas) were rejected. Adoption of these 2007 alternatives would provide much of the regulatory coverage contemplated by the Project without creating inconsistent regulation. Additionally, it is not clear from the Initial Study whether there has been any consideration of other alternatives. If this analysis has been performed, it should be documented and communicated to the public to assist in the environmental planning process. If other alternatives were not evaluated in detail, this fact should be made explicit, and an explanation should be given for why other alternatives were not evaluated in depth or rejected.

D. Splitting the overall policy into phases is unlawful segmentation of the project.

Pursuant to SWRCB Resolution No. 2008-0026, the Project represents only the first phase of a three-phase approach.

The first Phase will:

establish a Policy to protect wetlands from dredge and fill activities. The Development Team is directed to develop and bring forward for SWRCB

consideration: (a) a wetland definition that would reliably define the diverse array of California wetlands based on the United States Army Corps of Engineers' wetland delineation methods to the extent feasible, (b) a wetland regulatory mechanism based on the 404 (b)(1) guidelines (40 C.F.R. parts 230-233) that includes a watershed focus, and (c) an assessment method for collecting wetland data to monitor progress toward wetland protection and to evaluate program development.

Phase two will:

expand the scope of the Policy to protect wetlands from all other activities impacting water quality. The Development Team is directed to develop and bring forward for SWRCB consideration: (a) new beneficial use definitions, (b) water quality objectives, and (c) a program of implementation to achieve the water quality objectives, as necessary, to protect wetland-related functions.

Phase three will:

extend the Policy's protection to riparian areas. The Development Team is directed to develop, and bring forward for SWRCB consideration: (a) new beneficial use definitions, (b) water quality objectives, and (c) a program of implementation to achieve the water quality objectives, as necessary, to protect riparian area-related functions.

These three phases are all part of a single interconnected policy. By initiating CEQA analysis of only the first phase without simultaneously analyzing the environmental effects and impacts of the other two phases of the policy, the SWRCB is engaging in impermissible piecemealing of the analysis of the Project's effects.

CEQA does not permit piecemeal review wherein a large project is divided into multiple smaller projects. That approach, by allowing each smaller project to be evaluated in isolation, prevents decision-makers and the public from being able to fully evaluate the impact of a larger-scale project or policy. "The requirements of CEQA cannot be avoided by piecemeal review which results from chopping a large project into many little ones--each with a minimal potential impact on the environment--which cumulatively may have disastrous consequences." (*Rio Vista Farm Bureau Center et al. v. County of Solano et al.*, (1992) 5 Cal. App. 4th 351, 370, quoting *Bozung v. Local Agency Formation Com.*, (1975) 13 Cal. 3d 263, 283-284). "Thus, 'reasonably anticipated future projects' must be considered in an EIR and discussed in a cumulative analysis." (*Id.*, quoting *Laurel Heights Improvement Ass'n. v. Regents of University of California*, (1988) 47 Cal. 3d 376, 394).

By splitting its overall policy into three phases, the SWRCB has engaged in precisely the type of piecemealing that is prohibited by CEQA. Separate environmental analysis of each of the three phases will make it impossible for the public and decision-makers to evaluate the overall policy's environmental impacts. By refusing to consider public comment on phases two and three of the policy, the SWRCB prevents proper analysis of the overall policy's environmental impacts and diminishes the CEQA process.

Accordingly, TCA respectfully requests that the three phases of the SWRCB's new wetlands and riparian management policy be analyzed as integrated components of a single project.

IV. THE PROJECT IS AN UNDERGROUND REGULATION

CEQA requires that certain agencies, specifically including the SWRCB, "perform an environmental analysis of the reasonably foreseeable methods of compliance" at the time of "adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirements" (Public Resources Code § 21159(a)). The environmental analysis shall, at minimum, include all of the following:

- (1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.
- (2) An analysis of reasonably foreseeable feasible mitigation measures.
- (3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation. (CEQA Guidelines, § 21159.)

Also, "[T]he environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites." (CEQA Guidelines, § 21159.)

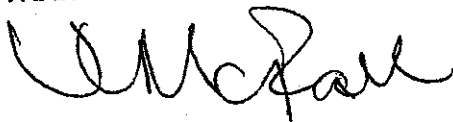
The Project qualifies as a rule or regulation that will require the installation of pollution control equipment and treatment requirements. Therefore, the EIR is required to include an environmental analysis of the reasonably foreseeable methods of compliance. Given the importance of evaluating methods of compliance with the Project, some description of reasonably foreseeable methods of compliance should appear in the Initial Study.

Due to the failure of the Initial Study to specify potential reasonably foreseeable methods of compliance with the Project's policy, the public is deprived of information regarding the availability of any methods of compliance, and are precluded from determining if the potential methods of compliance may also create physical impacts to the environment. It is quite likely that methods of compliance with the Project's policy would create significant adverse impacts on the environment.

We appreciate the opportunity to submit our comments.

Sincerely,

TRANSPORTATION CORRIDOR AGENCIES



Valarie McFall
Director, Environmental Services