

Wetland & Riparian Area Protection Policy CEQA Scoping

Sierra Room

Cal EPA Headquarters Building

1001 I Street, Sacramento, CA

April 9, 2007



CALIFORNIA
Water Boards
STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS

What we are doing today

1. Begin public participation
2. Receive public comments on:
 - Identify issues for environmental analysis
 - Identify the range of policy alternatives to be analyzed
3. No Board action today
4. No formal response to comments

CEQA Checklist

Evaluate possible environmental impacts of the policy alternatives on the following categories:

- Aesthetics
- Agriculture
- Air Quality
- Biological Resources
- Cultural Resources
- Geology & Soils
- Hazardous Materials
- Hydrology & Water Quality
- Land Use & Planning
- Mineral Resources
- Noise
- Population & Housing
- Public Services
- Recreation
- Transportation
- Utilities & Sewer Services

Scoping Comments Due April 19

Contact:

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Policy Background

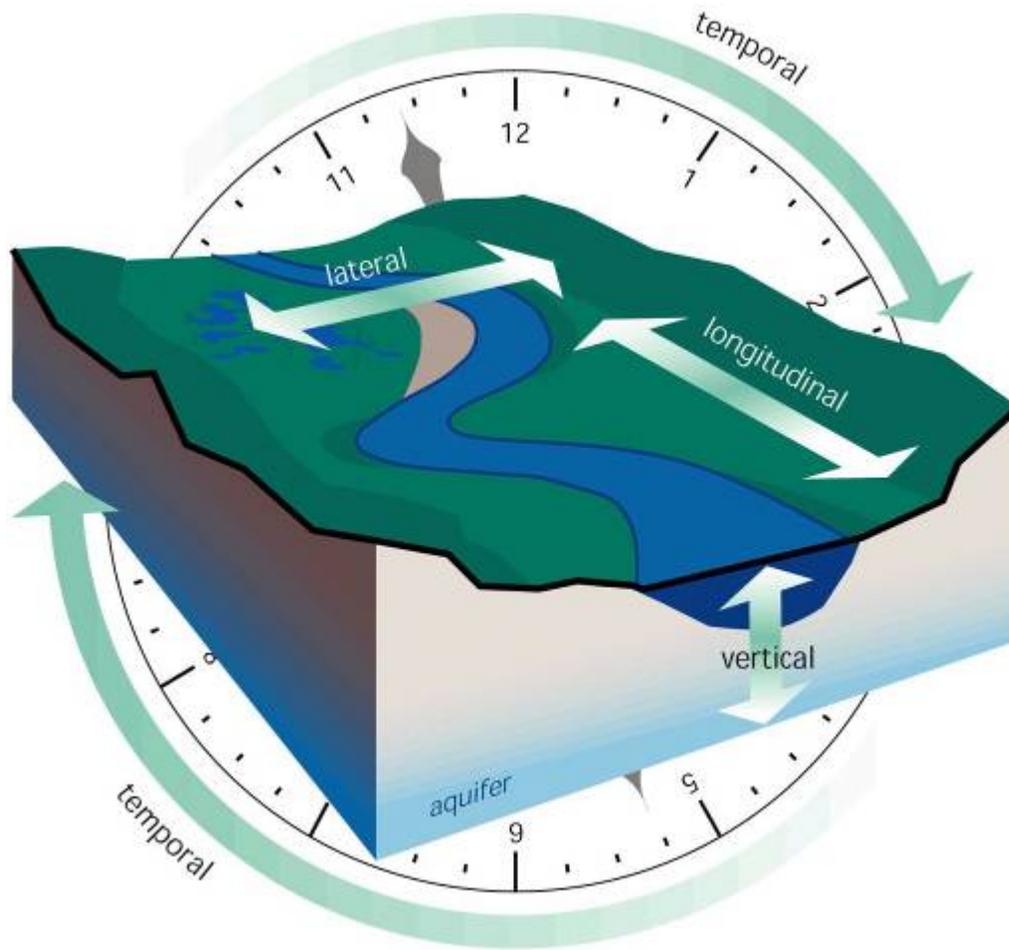
- Water quality linked to wetland and riparian areas
- Status of wetland and riparian areas
- Current program
- Policy Alternatives

Functions of Wetlands & Riparian Areas That Protect Water Quality

- Pollutant Removal
- Sediment Transport and Storage
- Temperature and Microclimate Control
- Streambank Stability
- Fish and Wildlife Habitat
- Habitat Connectivity
- Flood Water Retention
- Groundwater Recharge
- Energy and Nutrient Cycling



Stream and Wetlands System Dimensions



Four Dimensional
Framework

Longitudinal

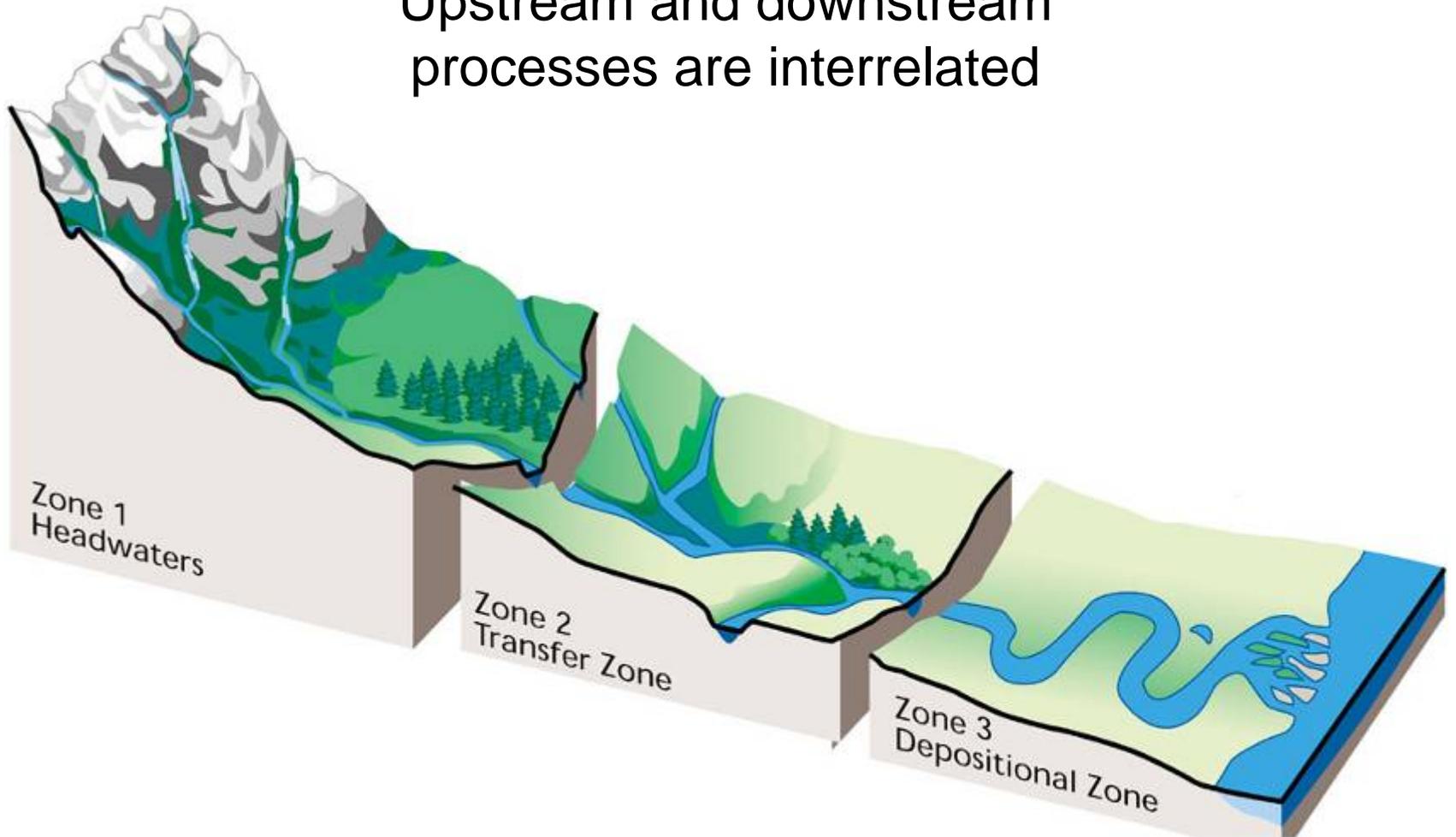
Lateral

Vertical

Temporal

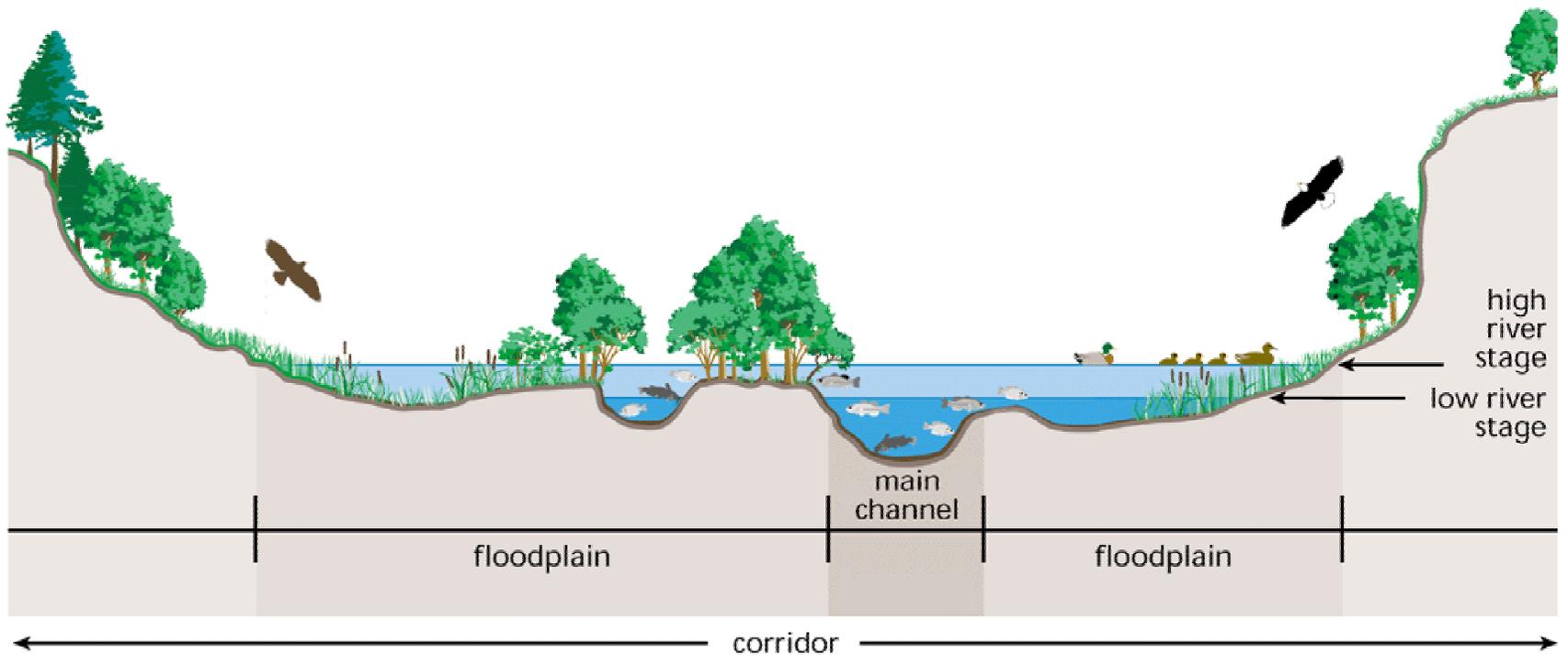
Longitudinal Dimension

Upstream and downstream processes are interrelated



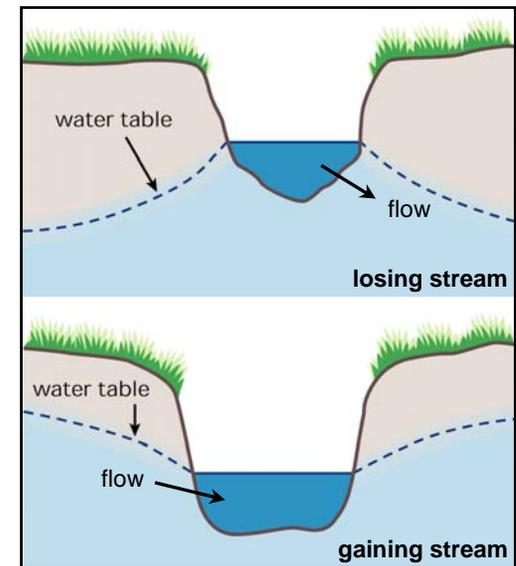
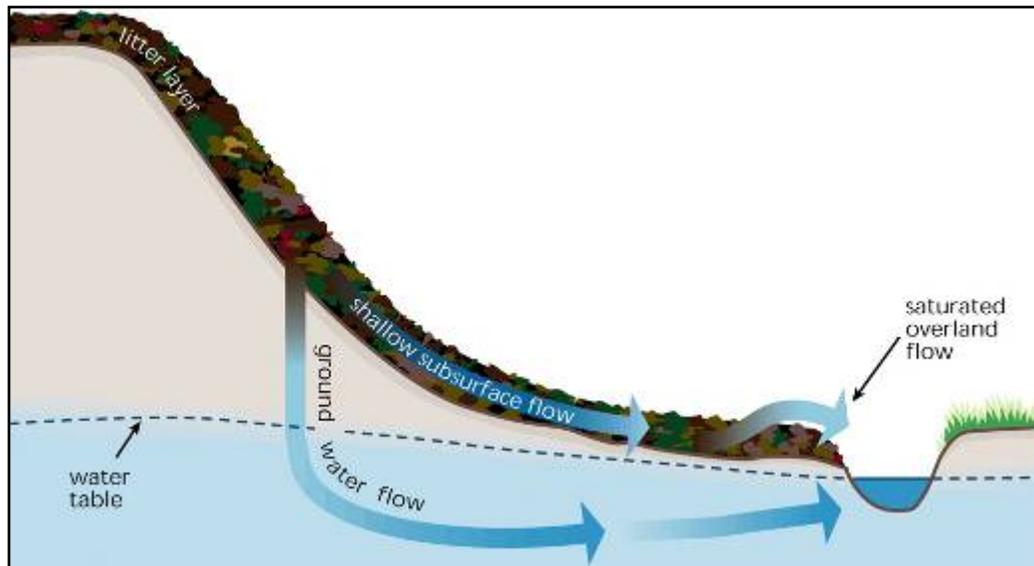
Lateral Dimension

Stream and wetland system elements connected during ordinary and/or flood flows



Vertical Dimension

Subsurface flows connect uplands with the stream channel



Temporal Dimension

Dynamic systems undergoing seasonal and inter-annual changes



Status of Wetlands & Riparian Areas in California

- 91% of historic wetland acreage already lost
- Up to 98% of historic riparian areas lost
- 1993 Governor's mandate for 'no net loss' in wetland acreage, quality, & values
- In spite of mitigation, loss continues, imperiling water quality

Loss Continues

- Over a recent 1 year period, fill increased
 - Streambed fill 30%
 - Wetland fill 38%
 - Riparian fill 69%
- Although losses have been mitigated at a minimum 1:1 acreage...
- Quality and function have not been achieved

Mitigation Evaluations

- National Research Council wetland study
 - ‘No net loss’ goal not being met
 - Functions not being restored along with the acreage
- UCLA Compensatory Mitigation Study
 - State’s ‘no net loss goal’ not being met
 - Most mitigation sites not functioning wetlands

What’s missing? Watershed-level functions of wetlands are often not part of compensation siting analysis & decisions.

Wetland & Riparian Degradation = Water Body Impairment

- State Water Board responsible for protecting water quality
- Riparian vegetation is linked to water quality.
- In North Coast Region, riparian disturbance identified in :
 - 92% of temperature impairments
 - 67% of sediment impairments

Water Boards Current Program

- **State Porter-Cologne Act**
 - Provides State broad authority to regulate discharges of waste that could affect quality of the waters of the state
 - State Water Board issues waste discharge requirements
- **Federal CWA Section 404**
 - Army Corps of Engineers requires 404 permit for dredge or fill discharges to waters of the United States (federal waters)
 - State Water Boards provide Section 401 Certification certifying no water quality impact
 - Regional Board certifies projects within region, State Board certifies for multiple region projects
 - Of 1,147 projects, 5% (56) were for non-federal waters; only 4 state waste discharge requirements issued

Water Boards Current Program

- 2001 Supreme Court SWANCC decision
 - Limited scope of federal waters regulated under Section 404 permits
- 2003 report to Legislature identified limitations of using Section 404 in California to protect wetlands
 - Federal wetland definition too narrow
 - CWA jurisdiction less than Porter-Cologne jurisdiction
 - Watershed-level functions not protected by CWA
 - Not all activities affecting wetlands & riparian areas subject to 404(b)(1) permitting

Summary

- Functions being lost
- Water quality linked to functions of wetland and riparian areas
- Section 404 limitations
- Regulatory practice limitations
- Porter-Cologne authority

Components for a Protection Policy

1. Provide guidance for protecting wetland, riparian, and other waters no longer regulated under federal CWA
2. Provide state definitions of wetland and riparian areas that apply to state waters
3. Designate beneficial uses for wetland and riparian area functions
4. Establish requirements for evaluation of wetland & riparian area condition

Four Policy Alternatives

- Alternative 1 = No Action; no components
- Alternative 2 = Adopt federal 404 program as state program
 - Dredge or fill discharges only
 - Addresses two components
- Alternative 3 – Adopt new program policies
 - Dredge or fill discharges only
 - Addresses all four components
- Alternative 4 – Adopt new program policies
 - Variety of discharges and activities
 - Addresses all four components
 - Most like North Coast & SF Bay Region proposal

Alternative 1- No Action

- Use existing State policies and authorities
- No new policies or requirements
- No change in environmental protection
- Does not implement any recommendations from 2003 report to the Legislature

Alternative 2

- Adopt CWA 404(b)(1) Guidelines
- Apply to dredge or fill discharges only
- Rely on federal wetland definition
- State-only waters will have equivalent level of protection as federal jurisdiction waters
- Addresses only 2 needed components
- Use WDRs, waivers of WDRs, 401 certification

Alternative 3

- Adopt new state policy with some requirements similar to CWA 404(b)(1) Guidelines and some different
- Apply to dredge or fill discharges only
- Provide a higher level of protection for federal jurisdiction and state waters
- Addresses all 4 needed components
- Adopt wetland & riparian definitions; beneficial uses
- Address cumulative impacts, assessment, mitigation, performance
- Use WDRs, waivers of WDRs, 401 certification

Alternative 4

- Adopt new state policy with comprehensive framework regulating impacts to wetlands & riparian areas
- Apply to a variety of discharges & activities
- Provide a higher level of protection from dredge/fill discharges
- Address all 4 improvement needs
- Adopt wetland & riparian definitions; beneficial uses
- Address cumulative impacts, assessment, mitigation, performance
- Use WDRs, waivers of WDRs, 401 certification

Comparison of Alternatives

Description	Alt 1	Alt 2	Alt 3	Alt 4
1. Continue to use existing policies and authorities to protect wetlands and riparian areas.	x			
2. Develop new policies to protect wetlands and riparian areas:			x	x
<u>Resource identification</u>				
Statewide wetland definition			x	x
Statewide riparian area definition			x	x
Statewide beneficial uses for wetlands and riparian areas			x	x
<u>Requirements for discharges and activities</u>				
Dredge or fill material discharges		x	x	x
Other pollutant discharges (e.g., nutrients)				x
Hydromodification				x
Land and vegetation clearing activities				x
Invasive species				x
<u>Types of requirements</u>				
Framework to address cumulative impacts			x**	x
Functional assessment methodology			x**	x
Mitigation sequencing and compensatory mitigation requirements		x*	x**	x
Project performance standards		x*	x**	x

* Would be taken from the federal CWA 404(b)(1) Guidelines with minimal revisions to reflect state authorities under the California Water Code.

** Would apply to dredge or fill material discharges only.

Policy Development Steps

- CEQA scoping meetings – April 2007
- After meetings are completed
 - Review scoping meeting comments
 - Select preferred alternative
 - Draft policy and CEQA document
 - Public comment
 - Hearing
 - Adoption