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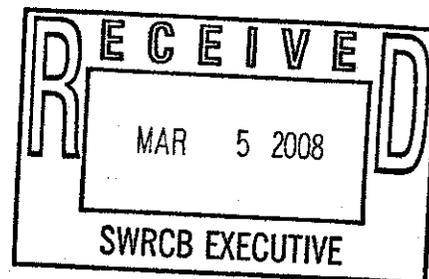
3/18/08 Bd. Mtg. Item 11  
Wetlands & Riparian Areas  
Deadline: 3/5/08 by 12 p.m.



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March 3, 2008

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Subject: Proposed Board Resolution to Develop a Policy to Protect Wetlands and Riparian Areas**

Dear Ms. Townsend:

The California Department of Transportation (Caltrans) appreciates the opportunity to comment on the proposed Board resolution to develop a Policy to Protect Wetland and Riparian Areas (Policy). Caltrans submits the following comments.

Caltrans agrees with the State Water Boards focus on planning at the watershed level as the most effective strategy, especially with respect to compensatory mitigation. Although, Caltrans is concerned that the wetland/riparian assessment method to be developed for collecting wetland data and monitoring reports at a watershed level (Phase 1 of the Board's three Phase approach) could cause substantial delays in project delivery due to the need to acquire voluntary permission from property owners outside of the Caltrans project limits in order to collect wetland/riparian assessment and monitoring data at the watershed level. Private property owners often simply deny access to properties for environmental studies.

In Phase 1, the intent to develop a wetland definition to reliably define the diverse array of California's wetlands would be a duplication of effort. The U.S. Army Corps of Engineers (ACOE) wetlands definition has undergone years of scientific and regulatory scrutiny, recently resulting in the development of regionally specific delineation manuals for California's diverse array of wetland types. The development of a new State wetland definition to be implemented in addition to the use of existing and soon to be released ACOE regional supplements would add increased levels of documentation, approvals (permitting), and the time associated with these could result in delays to numerous critical transportation projects. In addition to the increased time associated with documentation and approvals, the Board will also need to consider the cost and time associated with training staff on the implementation of the new wetland/riparian assessment method to be developed for collecting wetland data and

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monitoring reports at a watershed level (Phase 1 of the Board's three Phase approach) under the new wetlands/riparian protection policy.

The Policy should clearly show how the addition of a wetland/riparian assessment method to be developed for collecting wetland data and monitoring reports at a watershed level (Phase 1 of the Board's three Phase approach) will provide greater water quality benefits compared to the cumulative cost associated with implementation of the Policy. Caltrans projects that are funded by the Federal Highway Administration could be at risk of losing funding for mitigation of unavoidable wetland impacts that exceed the current federal wetland regulations.

Phase 2 of the Policy implementation strategy calls for the scope of the Policy to expand and protect wetlands from all other activities impacting water quality. This phase needs to consider that stormwater runoff from Highways and other Caltrans facilities is addressed by the Caltrans Statewide NPDES Permit issued under Section 402 of the Clean Water Act. Caltrans requests clarity in the regulatory scope of the Policy requirements being developed. In particular, we urge the Board to ensure that the Policy process does not result in overlapping regulatory structures.

Phase 3 of the Policy implementation strategy that calls for extending protection to riparian areas would essentially mimic the intent and jurisdiction of section 1602 of the California Department of Fish and Game Code. The regulatory requirements under section 1602 of the California Department of Fish and Game Code extend from the bed and bank of a waterway to the outer limits of the riparian zone. Caltrans requests clarity in the regulatory scope of the Policy requirements being developed. In particular, we urge the Board to ensure that the Policy process does not result in overlapping regulatory structures and that the Policy provides for a clear evaluation of the increased protection for the environment in relation to the increased time and cost associated with the implementation of the proposed Policy.

The California Water Boards use of California's independent authorities under the Porter-Cologne Water Quality Control Act to protect vital resources (wetland and riparian areas) is limited to waste discharges to Waters of the State. As defined in the Porter-Cologne Water Quality Control Act, waste includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to and for the purposes of disposal. This definition of waste from the Porter-Cologne Water Quality Control Act puts into question the validity of the proposed Policy under California's independent authorities under the Porter-Cologne Water Quality Control Act to protect wetland and riparian areas. Caltrans request clarification of the California Water Boards authority to implement a Policy of increased protections of wetland and riparian areas under California's independent authorities under the Porter-Cologne Water Quality Control Act.

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In summary, the Policy to be developed is likely to have a major impact on Caltrans and will potentially affect the schedule and cost of our maintenance activities, safety improvements, and new highway projects. Caltrans in conjunction with the California Water Boards, would most likely need to develop programmatic agreements for drainage and culvert work in order to implement our extensive roadway maintenance activities statewide.

Thank you for the opportunity to comment. If you have any questions regarding these comments, please feel free to contact Greg Erickson at (916) 654-6296 or Mitch Dallas at 805-542-4662.

Sincerely,



Mitch Dallas  
Senior Wetlands Biologist and  
Mitigation Coordinator  
Division of Environmental Analysis