

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2008-**

**DEVELOPMENT OF A POLICY TO PROTECT WETLANDS AND RIPARIAN AREAS
IN ORDER TO RESTORE AND MAINTAIN THE WATER QUALITY AND BENEFICIAL USES
OF THE WATERS OF THE STATE**

WHEREAS:

1. Over 85 percent of historic wetland and riparian acreage in California has been lost according to published research estimates. Remaining resources continue to be vulnerable to future impacts from projected population growth, land development, sea level rise, and climate change in California.
2. Although physically occupying only a small percentage of California watersheds, wetlands and riparian areas provide valuable water quality functions such as flood control, pollutant filtration, water supply and replenishment, recreation, and habitat for a wide variety of plants and animals. Wetlands and riparian areas act to promote the health and existence of other vital natural resources, and provide significant economic benefits to California.
3. The value of wetlands and riparian areas has been recognized in California through the enactment of the California Wetlands Conservation Policy that sets a goal to “ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property” (Executive Order W-59-93).
4. The State has relied primarily on requirements of the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) (Clean Water Act) to protect wetlands and riparian areas for water quality goals.
5. Recent U.S. Supreme Court rulings (*Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 2001 and *Rapanos v. United States*, 2006) have reduced the jurisdiction of the Clean Water Act over wetland and riparian areas by limiting the definition of “waters of the United States.” These decisions necessitate the use of California’s independent authorities under the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) to protect these vital resources.
6. In 2003, the State Water Resources Control Board (State Water Board) issued a report to the Legislature titled, *Regulatory Steps Needed to Protect and Conserve Wetlands Not Subject to the Clean Water Act (Supplemental Report of the 2002 Budget Act Item 3940-001-0001)*. This report reviewed the critical role that wetlands and riparian areas have in protecting the beneficial uses of waters throughout the State. Consistent with the State Water Board and Regional Water Quality Control Boards’ (Regional Water Boards) (collectively California Water Boards) 2001 Watershed Management Initiative, this report further recognizes that a watershed-level approach is needed to protect wetlands and riparian areas and their associated water quality functions.
7. In 2004, State Water Board staff initiated a Workplan upon the California Environmental Protection Agency’s request (*Workplan: Filling the Gaps in Wetland Protection*) to address the waters of the State that are no longer protected under the Clean Water Act. This *Workplan* specified the need to adopt a State wetland definition to “provide a standard metric to help determine compensatory mitigation requirements and compliance with [the] ‘no net loss’ policy [Executive Order W-59-93].” In addition, the *Workplan* included developing a statewide policy for wetland protection “at least as

protective as the federal requirements.” To immediately address part of “the gap,” the State Water Board adopted general waste discharge requirements for minor discharges to non-federal waters (Water Quality Order 2004-0004 May 4, 2004).

8. California continues to lose “functional wetlands” at an increasing rate despite the efforts of the State’s 401 Water Quality Certification Program. This fact is documented in a State Water Board research study contracted with UCLA titled *An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by The California State Water Resources Control Board, 1991-2002*. The current implementation of the 401 Water Quality Certification Program does not adequately protect functional wetlands. Unfortunately, compliance with regulatory requirements has not resulted in resource protection. Clearly, there is a need for a strong statewide policy that provides both guidance on the protection and restoration of wetlands, as well as assessing and measuring net change in wetland functions. . The purpose of the proposed Policy is to ensure no further net loss and ultimate long-term gain in the quantity and quality of “functional” wetlands and riparian areas within the State. Successful implementation of the proposed Policy will be assessed via measurable environmental outcomes.
9. In 2007, State Water Board staff completed public scoping meetings on wetland and riparian area policy alternatives and considered comments received in accordance with the California Environmental Quality Act.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board recognizes the beneficial services of wetlands and riparian areas for people and wildlife in protecting and improving water quality, providing fish and wildlife habitat including unique plant communities (i.e., wetland and riparian vegetation), storing floodwaters, maintaining surface water flows in dry periods, and other valuable functions. California has a rich ecological diversity, therefore, the State Water Board further recognizes that watershed focused planning is the most effective strategy for maintaining and enhancing these functions.
2. The State Water Board will take action to ensure the protection of the vital beneficial services provided by wetlands and riparian areas through the development of a statewide policy to protect wetlands and riparian areas (Policy) that is watershed-based.
3. The Development Team, as defined below, will examine the environmental issues, evaluate the relevant alternatives, and make recommendations regarding the Policy. To ensure a comprehensive scope, the staff is directed to consider additional alternatives and recommendations other than those outlined in the 2004 *Workplan*.
4. In recognition that successful Policy implementation will require a supporting level of internal program infrastructure, major policy areas should be addressed in a step-wise fashion and implemented in phases to allow for commensurate program development. The Policy shall support efforts to collect wetland data to monitor progress towards statewide wetland protection and to evaluate the level of program resources needed, including staffing, to undertake the next phases.
5. The State Water Board staff is directed to develop the Policy using a collaborative process that involves the Regional Water Boards and bring that Policy to the State Water Board for consideration. A California Water Board development team (Development Team) will be formed for the Policy. The Development Team will consider and utilize relevant plans, policies, and technical documents already adopted or being developed by the Regional Water Boards, including the Stream and Wetland Systems Protection Policy Basin Plan Amendment being prepared by Regions 1 and 2.

- a. The Development Team will coordinate with other State and federal agencies and interested stakeholders to ensure a high degree of public involvement and agency coordination throughout the Policy development process.
 - b. A charter will be developed by the Development Team defining the Development Team's purpose, responsibilities, goals and objectives, operating procedures, and timelines. The charter will identify the relationship of the Development Team to the water boards, other public agencies, and stakeholders. In July 2008, the Development Team will report back to the State Water Board on the proposed charter, before adoption by the Development Team.
 - c. The State Water Board will review the Development Team's progress in July 2008, and periodically thereafter to provide oversight guidance as needed.
 - d. The Policy, as well as the work of the Development Team, will inform and shape proposed Regional Basin Plan amendments. At a minimum for the proposed Regional Basin Plan amendments, this would include a review following the completion of the peer review process, and also a review within the public comment period prior to adoption hearings by the Regional Water Boards.
6. The Development Team will develop the Policy in three phases:
- Phase 1 – establish a Policy to protect wetlands from dredge and fill activities. The Development Team is directed to develop and bring forward for State Water Board 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 2 – 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 State Water Board 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 3 – extend the Policy's protection to riparian areas. The Development Team is directed to develop, and bring forward for State Water Board 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.
7. The Development Team will begin Phase 1 immediately with a target completion date of mid-2009. Work on Phases 2 and 3 will proceed in parallel or in sequence as appropriate and will follow in subsequent years. Phase 1 work products will include:
- a. An overarching policy statement establishing the intent of the California Water Boards to protect all waters of the State using a watershed approach in coordination with the Regional Water Boards; other local, State, and federal agencies; and local watershed and stakeholder groups and forums;
 - b. 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;

- c. A framework for protecting water quality and beneficial uses that relies on sequential avoidance, minimization, and mitigation of impacts; and,
 - d. Guidance on tracking wetland condition and function to monitor wetland protection and other required data to evaluate necessary program development resources.
8. At all phases, the Policy is intended to complement and support Region-specific plans and policies to protect the functionality of wetlands and riparian areas and should recognize the Regional Water Boards' essential role in implementing and informing statewide policy.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 15, 2008.

Jeanine Townsend
Clerk to the Board