

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**MEETING OF NOVEMBER 10, 2021  
VIDEO/TELECONFERENCE**

**Item 5**

**State of the 401 Certification Dredge/Fill Program**

**CHRONOLOGY**

June 2021	At the June 2021 Board meeting discussing the Lahontan Water Board 2021 Priorities and Strategic Narrative, the Lahontan Water Board was presented with the Regional Strategic Narrative and the Compliance & Planning Division Strategic Narrative documents. The Compliance & Planning Division's Strategic Narrative document identified a key Divisional Objective of Increase Efficiency/Effectiveness of Dredge & Fill Program. This informational item focuses on key challenges and issues observed within the Dredge & Fill Program over the past four year period (2017-2021) and specific strategies that staff are undertaking to address those same challenges and issues.
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**Background**

The Lahontan Water Board has embraced an organizational-wide effort to better define the agency's mission and critical goals and values needed to successfully achieve that mission. This effort led to the development of a Strategic Narrative to guide management and staff in furthering the Lahontan Water Board's mandate at all levels of the organization. The Strategic Narrative identified projects, permits, and initiatives that focus on the most pressing issues and challenges faced at the Division and Unit level over a 1-3 year and 12-18 month timeframe, respectively. During today's item and presentation, staff will discuss the Dredge & Fill Program and actions related to implementing the strategic narrative elements identified for the program.

The 401 Water Quality Certification and Dredge & Fill Program is responsible for regulating discharges of dredged or fill material to waters of the United States and/or waters of the State. The 401 Program has the authority to regulate these discharges under section 401 of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act (Porter-Cologne). CWA section 401 water quality certifications are issued to applicants for a federal Clean Water Act section 404 permits, for activities that may result in a discharge into waters of the United States (U.S.), including but not limited to the discharge of dredged or fill material. Waste discharge requirements

## Background

under Porter-Cologne are issued for discharges of dredged or fill material to waters of the State.

On April 2, 2019, the State Water Board adopted the State Wetland Definition and Procedures for the Discharge of Dredged or Fill Material to Waters of the State (Procedures). The Procedures became effective May 28, 2020. Applicants proposing to discharge dredged or fill material are required to comply with the Procedures unless an exclusion applies, or the discharge qualifies for coverage under a General Order. The adopted Procedures include required timelines for the Water Board to issue, or deny, a dredge and fill permit, and also require the applicant to include an alternatives analysis that demonstrates that the proposed project is the least environmentally damaging practicable alternative as part of their application.

The Dredge & Fill Program currently operates with 2.1 PYs to oversee ~220 active permits and ~ 25 pending applications. There have been three Program Managers for the Dredge & Fill Program at the Water Board during the period that this presentation covers (2017-2021). The Program Manager role has shifted from a line staff position to a Unit supervisor and back to a line staff lead since 2017. Additionally that role has shifted from the South Lake Tahoe office to the Victorville office and back to South Lake Tahoe with three different Unit supervisors overseeing the Program Manager or being the Program Manager. In 2021 the program hired a Caltrans funded position to assist with permitting needs for that agency, and has also received assistance from SB 901 staff in processing applications. With the help of these extra staff we have been meeting our performance targets for timely permit issuance.

Unit level focus of effort priority tasks that were identified in the Strategic Narrative all have the goal of improving the efficiency and effectiveness of the Dredge and Fill program. Specific issues currently being worked on to achieve the goal of improving efficiency and effectiveness of the program, include:

- efforts to fill vacant positions in the program
- streamlining permitting documents to better balance heavy workload
- improving document flow and data management practices, and having better coordination and consistency between the Tahoe and Victorville offices
- engaged in a higher degree of coordination with external partner agencies that are involved in dredge and fill activities
- improve the field presence for permitted activities to improve permit compliance thereby reduce the need for staff to engage in enforcement actions

## ISSUES

The Dredge & Fill Program is still falling short of having the type of field presence that this program demands to effectively regulate the orders we issue, even with the assistance from the new Caltrans liaison and SB 901 staff. As the program management has moved from the North Basin to the South Basin and back again, coordination between the two offices has improved and the desire for improved

## ISSUES

consistency in program implementation between the two basins has become an issue.

The program also faces challenges associated with recent federal/state policy changes, approaches to compensatory mitigation requirements, addressing climate change, evaluating Basin Plan prohibitions (Truckee/Tahoe specific), and having capacity for enforcement actions when necessary.

## DISCUSSION

The purpose of this item is to introduce many of the challenges and issues that the Dredge & Fill Program has been facing over the past four years and share with the Lahontan Water Board strategic focus of effort priority tasks that the program and program staff are undertaking to directly address those same challenges and issues.

Some challenges/issues that will be discussed and are being addressed through the Divisional Objective of Increase Efficiency/Effectiveness of Dredge & Fill Program:

- recent changes in federal and state policies
- compensatory mitigation associated with permitting conditions
- programmatic approaches to include climate change adaptation
- criteria for enforcing or exempting Basin Plan prohibitions at a project specific scale
- shift of enforcement responsibility to regulatory program staff

## PRESENTERS

Liz van Diepen, Engineering Geologist  
Tiffany Steinert, Engineering Geologist

## PUBLIC OUTREACH/INPUT

No public outreach was conducted for this item.

## RECOMMENDATION

There are no formal recommendations associated with this informational item.

ENCLOSURE	ITEM	BATES NUMBER
1	Staff Presentation	5-5



# **ENCLOSURE 1**



# Agenda Item No. 5

## State of the 401 Certification Dredge / Fill Program

Liz van Diepen  
Tiffany Steinert

November 10, 2021



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## Why We're Here

- Evaluation of agency mission, values, and goals
- Strategic Narrative
- Division Objectives (1-3 year timeframe)
  - Enforcement
  - **Improve efficiency/effectiveness of program**
  - Facilitate integration of Climate Change Strategy/Action Planning
- Focus of Effort (12-18 month timeframe)
- Discuss challenges/issues

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## Outline

- Introduction
- Federal and state changes
- Compensatory Mitigation
- Climate Change
- Basin Plan Prohibitions/Enforcement
- Challenges and plans to address them

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## State of the 401 Certification Dredge / Fill Program

### Introduction



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What We Do



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## Program Overview

- Who we are
- What we have
  - Staffing Resources
  - Performance targets
  - Active permits/pending applications

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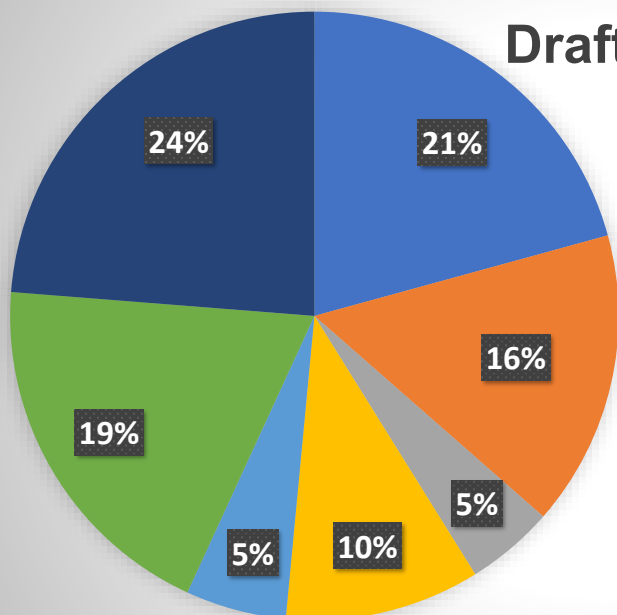
## Recent Program History: 2017-2021

- 2017: Program manager shift
- Late 2019: re-organization
- 2020: Program manager shift to line staff, new staff, exec management turnover, federal and state rule changes, enforcement duties transferred to regulatory staff
- 2021: two staff left, new staff in each office, federal rule change



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## Draft/Active Projects by Type



- Bank, Channel, Beach Modification (62)
- Boating and Navigation (47)
- Development (14)
- Ecological Restoration (31)
- Other - misc, data collection, rec (16)
- Transportation (58)
- Utilities (71)

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# State of the 401 Certification Dredge / Fill Program

## Federal and State Changes



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## Federal-Level Changes



- Waters of the US (WOTUS):
  - 2015 Clean Water Rule
  - 2020 Navigable Waters Protection Rule
  - Revert to pre-2015 determinations
- New CWA 401 Certification Rule
  - Timelines
  - Changes to Army Corps involvement in our process
  - Currently under revision

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## State-Level Changes

- State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State
- Future development: need to update general WDRs for impacts to non-WOTUS Waters of State
- Large Habitat Restoration General Order/CEQA

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## State of the 401 Certification Dredge / Fill Program

### Compensatory Mitigation



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## Compensatory Mitigation



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## Mitigation Banks & ILF Program

- Mitigation Banks
  - Honey Lake Mitigation Bank - Lassen County
  - Walker River Mitigation Bank (Upcoming) – Carson/Walker Watersheds
  - Petersen Ranch Mitigation Bank – Antelope Valley
  - Mojave River Mitigation Bank (Upcoming) – Mojave Watershed/Antelope Valley
  - Tapestry Mitigation Bank (Upcoming) – Upper Mojave Watershed
  - CDFW Mitigation Banks – no WOTUS
- In-lieu Fee Program (ILF)
- Interagency Review Team (IRT)

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## Permittee Responsible Mitigation

- Permittee responsible mitigation requires the discharger to provide the mitigation and success criteria that will satisfy the mitigation requirements set by staff for their project
- Mitigation ratio criteria:
  - Mitigation site location
  - Net loss of aquatic resource
  - Type of mitigation being completed
  - Risk and uncertainty
  - Temporal loss

## Basin Plan – Preferred Mitigation Sequence

- In-kind onsite mitigation (Permittee Responsible)
- In-kind offsite (Mitigation Bank, ILF, Permittee Responsible)
- Out of kind (Mitigation Bank, ILF, Permittee Responsible)

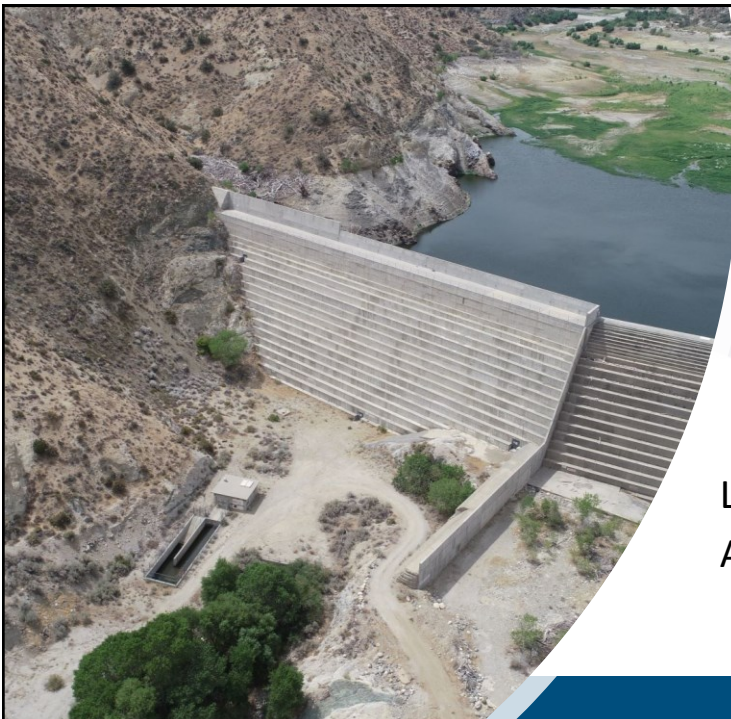
# State of the 401 Certification Dredge / Fill Program

## Climate Change



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## Drought

Littlerock Reservoir  
August 2021

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## Increased Storm Intensity

Littlerock Reservoir Spillway  
April 2020

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Increased  
Application  
Scrutiny



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## Aquatic Invasive Species

- Spread by boat props, dredging impacts
- Increased funding for control projects in Lake Tahoe
- Balancing cumulative impacts with WQ benefit

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## Climate Change Strategy

Nexus with program = protection of wetlands, floodplains, and headwaters

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# State of the 401 Certification Dredge / Fill Program

## Basin Plan Prohibitions & Enforcement



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## Surface Water Prohibitions

- North Basin:
  - *The discharge, attributable to human activities, of any waste or deleterious material to surface waters of the Tahoe/Truckee/Carson/Walker Hydrologic Unit is prohibited*
- South Basin:
  - *The discharge of waste to surface water, including sewage or sewage effluent, is prohibited in the following locations: Mill Creek and Lee Vining Creek watersheds, Rush Creek above Grant Lake outlet, Owens River and its tributaries above 5,000'*
  - *The discharge of waste to surface water is prohibited above elevation 3,500 feet in the Antelope Valley Hydrologic Unit*

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## Truckee River Floodplain Prohibition

- *The discharge or threatened discharge, attributable to human activities, of waste to lands within the 100-year floodplain of the Truckee River, Little Truckee River, and their tributaries is prohibited.*
  - At minimum, applied to dredge/fill-related stream impacts (including ephemeral) and FEMA-mapped floodplains

## Enforcement

- Previous enforcement strategy
- New enforcement strategy (2020)/prioritization challenges
- Truckee area development pressures



# State of the 401 Certification Dredge / Fill Program

## Challenges & Proposed Solutions



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## Challenges

- Program stressors
- Staff turnover
- Shifting regulatory processes at federal and state levels
- Mitigation banks lacking in headwater areas
- Climate change

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## Recent Program Successes

- Increased communication and program implementation consistency among dredge/fill staff
- Staff improved program data management and workflow (CIWQS)
- New staff trained in program
- Increased permit condition specificity, allowing for clear expectations between permittees and staff
- Streamlined permit review and approval process
- Shift to remote work and paperless office





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