

Wetland Area Protection and Dredge and Fill Permitting Policy for California

San Diego Regional Water Quality
Control Board

State of Wetlands in San Diego Region
September 10, 2014

Today's Presentation

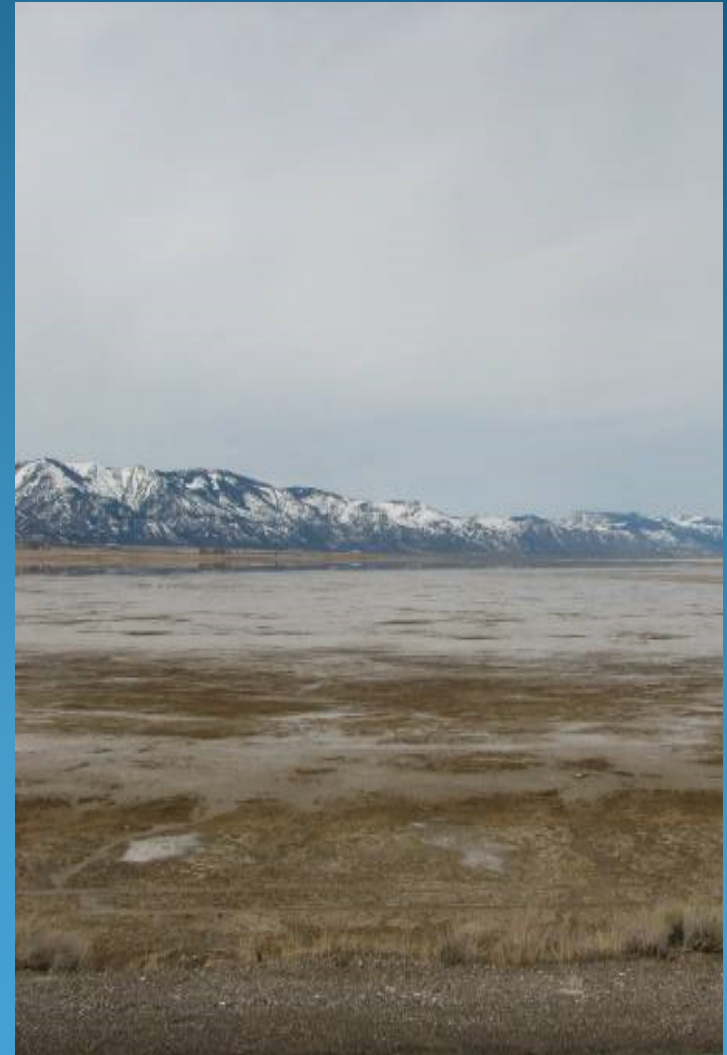
- Discuss need and purpose of Policy
- Highlight alignment with Corps' regs
- Policy implementation
- Target dates
- Questions and comments

Why Do We Need a Policy?

- No single adopted wetland definition for Water Board regulatory use; difficulties regulating undefined resource
- No standardized Water Board compliance regulations for dredge and fill permits. Regulated community cannot rely on a predictable permit process.
- Water Board Permitting procedures differ for federal versus non-federal waters; in effect, separate procedures resulting in inefficiencies.

Policy Purpose

- Protect all Waters of California, including Waters of the US, from dredge and fill discharges
- Provide a wetland definition for the state
- Standardize Water Board dredge and fill permitting procedures



Policy: Three Phases

- Phase 1: Wetland Definition and Dredge/Fill Review Procedures
- Phase 2: Water Quality Control Plan for Wetlands (“WQ Standards”)
- Phase 3: Implementation Guidance for Aquatic (“Riparian”) Buffers

Phase 1: Underway



DRAFT

**WATER QUALITY CONTROL POLICY
for
Wetland Area Protection and Dredge and Fill
Permitting**

STATE WATER RESOURCES CONTROL BOARD

Phase 2 and Phase 3 are on hold until Phase 1 is adopted.

Proposed Wetland Definition

“An area is a wetland if, under normal circumstances,

- 1) The area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both;
- 2) The duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and
- 3) The area is either dominated by hydrophytic vegetation or lacks vegetation.”



+/- With Corps' Definition

1. Similarities:

- 3 parameter definition requiring presence of wetland soils, plants and hydrology
- Same identification criteria using the Corps' '87 delineation manual and CA supplements

2. Variances:

- Non-vegetated wetlands recognized (mudflats, playas, seasonal wetlands)

Dredge and Fill Procedures: **Alignment** with Corps

To align with the Corps' § 404 Program, the following activities and areas that are exempt in the federal program are also proposed to be excluded from the proposed Policy dredge and fill procedures:

- Clean Water Act § 404 (f)(1) farming, ranching and silvicultural activities
- Prior Converted Cropland (wetlands converted from non-ag use to cropland before 12/23/85 certified by NRCS)
- Constructed treatment wetlands that are actively managed

Note: *Projects that include these activities or areas that discharge to waters of the state would be permitted under other Water Board policies , plans or permits.*

Dredge and Fill Procedures: **Alignment** with Corps

- Working draft has incorporated by reference:
 1. Corps' regs and guidance letters related to CWA § 404 (f)(1) exempt activities
 2. 404 (b)(1) Guidelines, 40 CFR Part 230 (which includes the “new” mitigation rules)

Dredge and Fill Procedures: **Alignment** with Corps

Policy's Proposed Approach for Alternative Analysis:

1. If alternative analysis is required by Corps, Water Boards will defer to Corps' LEDPA determination. If not, and if required by Water Boards, then Water Boards will determine LEDPA following the requirements of the 404 (b)(1) Guidelines.
2. Policy will include waivers to provide "off-ramps" to the alternative analysis requirement similar to Corps' general permits

Dredge and Fill Procedures: **Alignment** with Corps

Policy's Proposed Mitigation Requirements:

1. The Corps' new mitigation rules are incorporated by reference as part of the 404 (b)(1) Guidelines
2. The Policy may clarify some elements of the Corps' mitigation rules .

Policy Implementation

Two-part strategy:

1. Communication activities concerning policy content and coordination with Corps § 404 program; will include FAQs, website guidance, staff training (e.g. CRAM and EcoAtlas/Wetland Tracker).
2. Focused application of Policy to large, multi-regional projects (HSR, alternative energy, Central Valley flood protection)

Next Steps & Target Dates

Action	Calendar Date
Release draft SED, and Policy for public review and comment	4 th Qtr. 2014
Public Workshop (during comment period)	4 th Qtr. 2014
Public Hearing (during comment period)	4 th Qtr. 2014
State Water Board Adoption	1 st Qtr. 2015

Questions?

