

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**EXECUTIVE OFFICER SUMMARY REPORT
DECEMBER 8, 2020**

ITEM 10

SUBJECT

New Procedures Applying to Discharges of Dredged or Fill Material to Wetland and Riparian Areas. (*Eric Becker*)

STAFF RECOMMENDATION

This is an informational item and the Board will not take an action.

KEY ISSUE

New procedures applying to permit applications for discharges of dredged or fill material have been promulgated in regulation by the United States Environmental Protection Agency (USEPA) and adopted in statewide water quality control plans by the State Water Resources Control Board (State Water Board) in separate actions since 2019. The procedures are impacting the San Diego Water Board's Wetlands Permitting and Enforcement Program and the effectiveness of regulatory actions to protect and restore the San Diego Region's wetlands and riparian areas. State Water Board staff will provide an update and statewide perspective on the status of these procedures.

PRACTICAL VISION

The Wetlands Permitting and Enforcement Program implements the San Diego Water Board's Practical Vision entitled *Healthy Waters, Healthy People*. The permitting, inspection, compliance, and enforcement activities of the Program directly implement the aspirational goals of Chapter 3 of the Practical Vision, *Recovery of Stream, Wetlands and Riparian Systems*, to attain no overall net loss and a long-term net gain in the quantity, quality, and sustainability of aquatic resources.

DISCUSSION

The Wetlands Permitting and Enforcement Program's jurisdiction over dredged and fill material discharges puts it on the front line of protection for wetlands and riparian areas. A summary overview of the regulatory framework is provided in **Supporting Document No. 1**.

State Water Board Procedures

The State Water Board adopted the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* on April 2, 2019.¹ The Procedures are included as amendments to the *Water Quality Control Plan, Ocean Waters of California* (Ocean Plan) and the forthcoming *Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries* (ISWEBE Plan). The ISWEBE and the Ocean Plan Amendments are hereafter collectively referred to as the Procedures.

¹ The State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State are available on the State Water Board website at: https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/procedures_conformed.pdf

The Procedures consist of four major elements: 1) a wetland definition; 2) a framework for determining if a feature that meets the wetland definition is a water of the State of California (State); 3) wetland delineation procedures; and 4) procedures for the submittal, review and approval of applications for water quality certifications and waste discharge requirements/waivers for dredged or fill activities. The Procedures became effective on 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 State Water Board developed the Procedures to address several important issues including the need to strengthen protections for waters of the State that are no longer protected under the Clean Water Act (CWA) due to past U.S. Supreme Court decisions.

USEPA CWA Section 401 Certification Rule

Section 401 of the CWA requires that, for any federally licensed or permitted project that may result in a discharge of dredged or fill material into waters of the United States, a water quality certification be issued to ensure that the discharge complies with applicable state water quality requirements. On April 10, 2019, President Trump issued Executive Order 13868, *Promoting Energy Infrastructure and Economic Growth*, which directed USEPA to review and update CWA section 401 related regulations and guidance. On June 1, 2020, the USEPA completed the review process by finalizing the *Clean Water Act Section 401 Certification Rule*² to implement the water quality certification process. The final rule addresses some key areas of the CWA section 401 certification process, including: a) timelines for review and action, b) initiating certification, c) scope of certification review, d) technical assistance and e) early engagement. The Water Boards strongly opposed the USEPA's changes to the CWA section 401 certification process which reverses fifty years of agency practice in a comment letter stating that "...The Proposed Rule is a clear overreach that ignores the state's authority to regulate its own water resources and disregards the principles of cooperative federalism established by the Clean Water Act and repeatedly affirmed by the United States Supreme Court."

PUBLIC NOTICE

This item was publicly noticed in the Meeting Notice and Agenda for the December 8, 2020 meeting. The agenda notice for today's meeting was posted on the San Diego Water Board website and sent to subscribers to the email list for Board meetings.

SUPPORTING DOCUMENTS

1. Summary Information on the Regulatory Framework for Wetland Riparian Area Protection

² Information on the Clean Water Act Section 401 Certification Rule is available on the USEPA website at <https://www.epa.gov/cwa-401/final-rule-clean-water-act-section-401-certification-rule>