

**California Regional Water Quality Control Board
San Diego Region**

**Summary Information on
Regulatory Framework for
Wetland and Riparian Area Protection**

September 13, 2017

Unique Value of Wetlands and Riparian Areas

Wetlands and riparian areas are complex ecosystems that provide many services and functions of exceptional value in supporting flood and storm water control, surface and ground water supply, fish and wildlife habitat, erosion control, and pollution treatment. Wetlands and riparian areas also play an important role as buffers against rising sea levels and for sequestering carbon to combat climate change. Wetlands and riparian areas are uniquely important in sustaining the hydrologic, chemical, and ecological integrity of broader aquatic systems.

Wetland and riparian areas in the San Diego Region and throughout California have been heavily impacted by population growth and related development pressures that have contributed to adverse changes in hydrologic patterns and sediment flows, increased inputs of pollutants, channelization of stream corridors, permanent loss of wetlands and riparian areas, and encroachment of urban development. Presently, aquatic resources are threatened by impacts from increasing population growth, land development, sea level rise, and climate change. Protecting and restoring wetlands and riparian areas in the face of these threats is essential to ensuring their unique functions and services are sustained.

Regulatory Framework

The [California Wetlands Conservation Policy](#)¹, established over twenty-four years ago and referred to as the “No Net Loss Policy”, announced the intent to advance statewide efforts to ensure no overall net loss and a long-term net gain in the quantity, quality and sustainability of wetlands and riparian areas in California.

California relies heavily on the federal regulatory program under Clean Water Act (CWA) section 404 and the State’s related CWA section 401 water quality certification (Certification) program to protect and restore wetland and riparian areas. CWA section 401 requires any entity applying for a federal license or permit to conduct any activity, which could result in a discharge of dredged or fill material to waters of the United States (federal waters) to obtain a Certification from the state in which the activity occurs. For example, performing an activity that involves dredging or filling of streams, rivers, bays, wetlands or the ocean requires a state Certification. Projects requiring Certification may also include building bridges, widening roadways, developing residential housing, installing utility and gas lines, and maintaining flood control facilities. The San Diego Water Board is the State agency responsible for issuing Certifications for projects in the San Diego Region and has delegated this function to the Executive Officer.

When the San Diego Water Board issues a Certification for a project, it is certifying that the project will comply with water quality standards contained in regional and statewide water quality control plans and policies. In the absence of such a Certification, the federal agency (typically the U.S. Army Corps of Engineers) may not issue the federal license or permit. The San Diego Water

¹ California Governor Executive Order No. W-59-93, August 23, 1993.

Board may condition its Certification as necessary to ensure compliance with State water quality standards. State conditions in the Certification must be included in the federal permit or license and are enforceable by the federal permitting agency.

The CWA section 401 Certification is an important State tool to protect wetlands and riparian areas because it allows the State to issue, deny, or condition proposed dredge and fill discharges which need CWA section 404 permits. However, because it is linked to a federal permit or license, section 401 can only be used to protect waters which are within federal jurisdiction. Regulatory authority under the California Water Code is used to regulate discharges of dredge and fill material to waters of the State that are outside of federal jurisdiction.

To achieve no net loss of aquatic resources under the federal and State regulatory programs, permittees are expected to avoid deliberate discharges of materials into wetland and riparian areas and then to minimize discharges that cannot be avoided. When impacts are unavoidable, permittees are required to provide “compensatory mitigation” as a condition of the Certification. Underlying the requirement for compensatory mitigation is the assumption, that it is scientifically possible to restore or re-create various aspects of the structure and functions of wetlands and riparian areas in a variety of environments.