

State Water Resources Control Board

**CWA §401 Water Quality Certification Program**

**§401 PROGRAM SCOPE AND STRATEGY**

December 19, 2002

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The State's Water Quality Certification (WQC) Program was formally initiated in 1990 in response to the requirements of Clean Water Act (CWA) §401. Issuing WQC for discharges requiring U.S. Army Corps of Engineers' permits for fill and dredge discharges remains a core responsibility. But the Program has evolved into also being the State's *de facto* wetland protection and hydromodification regulation program.

This document clarifies the Program's scope, presents State and Regional Board staff's collective vision for a more effective Program, and articulates program goals and objectives. It directly guides the activities of the State Water Resource Control Board's (State Board's) WQC Unit and indirectly affects the programs of the Regional Water Quality Control Boards (Regional Boards).

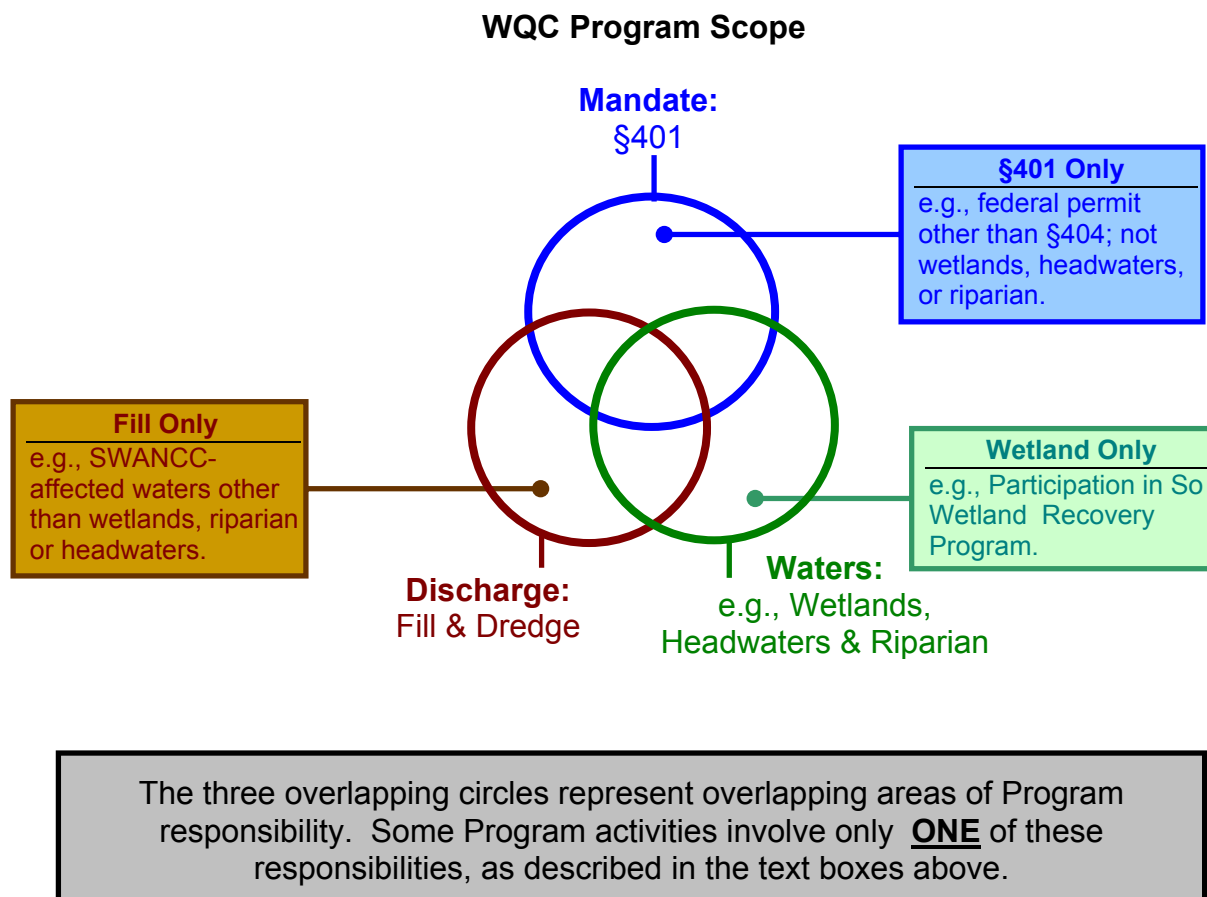
The *Scope and Strategy* was reviewed and approved by the State/Regional Board Water Quality Certification Program Coordinating Committee (Corcom) at its August 1, 2001, November 7, 2001, and October 30, 2002 meetings and by the Regional Board Assistant Executive Officers at their November 18, 2002 meeting.

**PROGRAM SCOPE**

The scope of the WQC Program is defined by the mandates, discharge types, and receiving waters for which it has responsibility. These are listed below:

- Mandates
  - CWA §401
  - Porter-Cologne Water Quality Control Act
  - the State and federal "No Net Loss" Policies for wetland,
- Discharge types
  - Fill and dredged material
- Waters
  - All waters of the State, including wetlands, headwaters, and riparian areas.

There is substantial, but not complete, overlap among these responsibilities. Some program activities involve only one or two of them as diagrammed below:



## SPECIAL RESPONSIBILITIES

The WQC Program protects all the waters within its regulatory jurisdiction. However, the Program has special responsibilities in regard to some waterbody types and discharge impacts which are not systematically addressed by other State and Regional Board programs. These include:

### Wetlands, Riparian Areas, and Headwaters

The WQC Program's jurisdiction over fill discharges puts it in the front line of protection for wetlands, riparian areas, and headwater streams. Regulatory attention to these waterbodies is necessitated by:

- the State and federal "No Net Loss" Policies for wetlands,

- the vulnerability of these waters to future impacts from projected population growth and land development in California<sup>1</sup>,
- the high habitat value of these waters,
- the basin-wide value of these waters for pollutant removal, floodwater retention, channel stability, and habitat connectivity,
- the high number of special-status species associated with these waters and their associated habitats,
- the high level of public and legislative interest in these waters,
- the high percentage of historic losses of these waters in California,
- the absence of any other State or Regional Board program focusing on these waters.

### **Special-Status Species**

The WQC Program's protection of wetlands, headwater streams, and riparian areas frequently involves protection of federal and/or State-listed special-status species (the RARE beneficial use), because many such species depend, directly and indirectly, on these waterbody types.

### **Hydromodification**

The WQC Program's regulation of in-stream fill and excavation projects<sup>2</sup> frequently requires attention to project-induced changes to channel form, flow regime, and sediment supply. The interaction among these three fundamental fluvial parameters creates the physical conditions which support habitat-dependent and other beneficial uses. Many projects affect these characteristics, resulting in flooding, bank erosion, and other adverse impacts to beneficial uses<sup>3</sup> up- and down-stream. A frequent result are attempts to protect property through more such projects, eventually culminating in a nearly total loss of natural stream functions and beneficial uses ("the L.A. River syndrome"). In addition to in-stream projects, Regional Boards use WQC to regulate the hydromodification impacts of increased stormwater flows from upland developments.

### **Watershed-Level Impacts**

In perhaps no other program is the need for basin-level analysis and protection so apparent. Project-specific regulation is essential, but cannot by itself assure the integrity of wetlands, riparian areas, and headwater streams<sup>4</sup>, especially given the population growth projected for California. Moreover, since these waters are disproportionately important in maintaining basin-wide beneficial uses<sup>5</sup>, project-specific regulation alone will not achieve the goals of the State

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<sup>1</sup> I.e., 15 percent population growth by 2010, 31 percent by 2020, 69 percent by 2040. State of California, Department of Finance, *County Population Projections with Age, Sex, and Race/Ethnic Detail*, December 1998

<sup>2</sup> E.g., channel reconfiguration, levees, bank hardening, abutments and piers, road and utility crossings, gravel mining, flood control excavation.

<sup>3</sup> E.g., WARM, COLD, MIGR, SPAWN, WILD, RARE.

<sup>4</sup> See for example, National Academy of Sciences, *Compensating for Wetland Losses Under the Clean Water Act*, Summer 2001.

<sup>5</sup> See for example, Peterson et al, "Control of Nitrogen Export from Watersheds by Headwater Streams", *Science*, 292:86, April 6, 2001.

Board's *Strategic Plan*. The WQC Program is often operating at the expanding margin of the available skills and tools for managing watershed-level impacts.

## **PROGRAM GOALS AND OBJECTIVES**

The State Board's WQC Unit will pursue the three following goals as discussed below :

### **Goals:**

1. Support the Regions' existing programs
2. Strengthen our watershed perspective
3. Improve the Program.

### **1. Support the Region's Existing Programs**

Supporting and enhancing the Regions' programs is the paramount job of the WQC Unit. The Unit, with support from Office of Chief Counsel, will continue doing this through:

- **Training** - CEQA, wetland delineation, regulating specific types of discharges, functions and values of specific waterbody types, etc.,
- **Guidance** - compensatory mitigation standards, enforcement, evaluation protocols for specific project types, etc.,
- **Consultation** - responding to technical, legal, and administrative queries from the Regions,
- **Management** - overall coordination, budget augmentation proposals, contract management, program tracking and reporting.

In setting task priorities, the WQC Unit will consider (1) the Regions' preferences, (2) the feasibility of successfully completing the work with available resources, (3) the mandated activities specified for contract funds, and (4) the level of State Board management support.

The WQC Unit may also propose new or revised policy or regulation in response to changing circumstances (e.g., SWANCC).

### **2. Strengthen our Watershed Perspective**

The current approach of the WQC Program is to protect waters on a project-by-project basis. As discussed above, strengthening our watershed perspective is also necessary. We will pursue the following objectives:

#### **Objectives:**

- develop ways to protect the basin-level functions of wetlands, headwater streams, and riparian areas, including pollutant removal, flood storage, and habitat-connectivity,
- systematically address the potential channel destabilizing effects of proposed projects,
- encourage low-impact project designs through complying with our CEQA responsibilities and otherwise outreaching to stakeholders,

- address cumulative impacts through complying with our CEQA responsibilities and by explore basin-level assessment methodologies,
- coordinate with other State and Regional Board programs, and with other agencies and stakeholders, in support of explicit watershed-level goals.

The WQC Unit will support the above elements by focusing training, guidance, technical support, consultation, and management support for the Regions' programs; through its direct regulation of multi-region projects; and by cultivating partnerships with related programs and external stakeholders.

### 3. Improve the Program

State and Regional Board staffs envision the following improvements to the WQC Program<sup>6</sup> and have identified related objectives:

#### Objectives:

##### 1. Programmatic:

- increase staff resources,
- improve monitoring and enforcement,
- promote regulatory streamlining (e.g., through general permits and certifications),
- improve inter-program communication<sup>7</sup>
- improve inter-agency coordination<sup>8</sup>.

##### 2. Technical:

Develop ability to systematically analyze and appropriately regulate the water quality impacts of:

- hydromodification,
- cumulative impacts,
- watershed-level impacts.

##### 3. Regulatory:

More effectively:

- protect habitat, including in-stream, riparian, and corridor,
- protect recreation values,
- require, monitor, and enforce compensatory mitigation to achieve State no net loss/net gain goals,

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<sup>6</sup> These ideas were developed and refined at the August 1, 2001 and November 7, 2001 meetings of the State/Regional Board Corcom.

<sup>7</sup> Key programs include Stormwater, Nonpoint Source, Watershed Initiative, and (in some cases) TMDLs.

<sup>8</sup> Key agencies are the Department of Fish and Game, Southern California Wetland Recovery Project, Bay Area Wetland Recovery Program, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and U.S. Fish and Wildlife Service.

- d. coordinate and integrate treatment and natural wetlands.

#### 4. Outreach:

Conduct outreach to:

- a. achieve community awareness of watershed/water quality issues,
- b. encourage low-impact development designs, e.g., through the CEQA process.

### **IMPLEMENTATION**

The principles presented in this document will inform our programmatic and project-specific decisions, including selection of contract projects, identification of needed training and technical support, and development of guidance. We will review this document annually and recommend changes as needed.