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Public Comment
Statewide Dredged or Fill Procedures
Deadline: 8/18/16 12:00 noon

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

August 10, 2016



State Water Resources Control Board
Post Office Box 100
Sacramento, CA 95812-2000

Comment Letter # 37

Attention: Jeanine Townsend, Clerk to the Board

Ladies and Gentlemen:

Re: Proposed Procedures for
Discharges of Dredged or Fill Materials
to Waters of the State

The District appreciates the opportunity to comment on the State Board's Proposed Procedures for Discharges of Dredged or Fill Materials to Waters of the State (formally known as the Wetlands Policy). The District is the regional flood management authority for the western half of Riverside County, California, which contains 1.8 million of the County's nearly 2.2 million residents. Besides flood protection, the District is also charged with promoting water conservation and serves as the Principal Permittee for three NPDES Municipal Separate Storm Sewer System (MS4) Permits covering stormwater discharges from the District, County of Riverside, Coachella Valley Water District, and incorporated cities of Riverside County.

This comment letter addresses the District's primary concerns from the perspective of flood control, water conservation, and stormwater quality.

GENERAL COMMENTS

Definition of "Waters of the State"

While it appears that the proposed procedures are mainly focused on wetlands the procedures also apply to other "waters of the state". If the intent of the procedures is for a "no net loss" of only wetlands within the state of California then impacts to other "waters of the state" should be exempt from these procedures.

37.1

The wetland definition as proposed is similar to the U.S. Army Corps of Engineers' definition except that the presence of vegetation is not required in the state rule. We would like to suggest that the Corps definition that states hydrology, soils and wetland vegetation must all be present for it to be considered wetlands.

37.2

The lack of a definition for non-wetland "waters of the state" as discussed in the procedures would require the Water Boards to determine on a case by case basis whether a feature would qualify as "waters of the state". This open interpretation will not only be a burden to applicants but will also require Water Board staff to spend additional resources and time to consult with applicants to make the determinations. A categorical description by the State Water Board of all other features that qualify as "waters of the state" or at the very least a list of features that would be exempt from the definition would greatly aid applicants and Water Board staff. Perhaps if an activity in non-wetlands "waters of the state" can be shown to have no negative impacts to beneficial uses then that activity would be exempt from the procedures.

37.3

Over Reliance on "Case by Case Basis" and "If Required"

Throughout the procedures there are references of determining actions on a case by case basis or if required by the permitting authority. This leaves a lot of guessing on the part of applicants in evaluating their activities that may or may not be subject to these procedures. This also will create additional burdens on Water Board staff as they will be tasked to determine what applies and they may need to spend a lot of time consulting with applicants even before an application is submitted. Even after an application is submitted there may be additional information required by the Water Boards. This could delay an application from being deemed complete, therefore, delaying a project. It should be clarified/defined in the procedures what is deemed a complete application which would help avoid unnecessary time delays. The use of the terms "case by case basis" and "if required" should be avoided if at all possible.

37.4

Overlap with 401 Certification Application

It is not clear whether these procedures/applications will replace or supplement the 401 Water Certification process. This should be clarified in the procedures. If the procedures are to supplement the 401 Water Certification this would require additional staff time and resources on applicants and the permitting agencies to address.

37.5

Mitigation Requirements

The mitigation requirements outlined in the procedures appear to be very onerous and may require substantial effort and time to develop a watershed profile from a watershed plan if a plan has not been developed already and if the permitting authority requires it. We understand that an approved in-lieu fee program or mitigation bank would have already met this requirement but any agency-sponsored compensatory mitigation could be subject to the watershed profile and watershed plan. This could cause a substantial delay in the completion of projects necessary to protect the public from flood events.

37.6

Section IV.A.vi requires if compensatory mitigation involves restoration or establishment the applicant shall consult with various agencies including flood control districts prior to initial site selection. It is not clear in the procedures how this must be accomplished. Would the permitting agency provide a list of contacts to the applicants? What would the permitting agency require from the applicants to fulfill this requirement? What would be required of the District as a flood control agency to consult with applicants?

37.7

Section IV.A.vii requires consultation with applicable airport land use commissions or other appropriate responsible public agencies to determine whether proposed compensatory mitigation within five miles of any airport may pose a danger to air traffic safety. The five-mile limit is excessive and beyond the typical airport influence area (two miles). We would recommend this requirement be deleted as projects are already subject to the rules and regulations of the local airport land use agency within their defined influence area.

37.8

Special considerations should be given to public agencies regarding the required financial security for compensatory mitigations. The requirement for a third-party entity to manage the mitigation site for public agency-sponsored mitigation should not be necessary. A letter of commitment to budget funds to manage the mitigation from the public agency should be acceptable.

37.9

Other Issues

Project application requires a delineation of wetlands but does not mention other waters. Does this mean that a delineation is not required of other features that could be determined to be "waters of the state"?

37.10

Provide definitions of General and Individual Orders. Are these in line with the Corps General and Individual Permits? If not, would an alternatives analysis be required when the activity fits under a Corps Nationwide Permit?

37.11

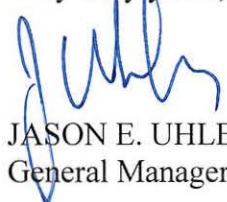
CONCLUSION

If the agencies do not modify the Proposed Rule to address the concerns set forth above, the District is concerned that our ability to effectively construct, operate, and maintain facilities to conserve runoff, to manage runoff water quality, and to protect life and property from flood hazards in a timely manner would be impaired. We, therefore, urge the State Water Board to consider our comments and those of other public agencies across the state and to re-issue the Proposed Rule in light of those comments.

37.12

The District thanks the State Water Board for the opportunity to comment on the Proposed Rule and for their consideration of these comments.

Very truly yours,



JASON E. UHLEY
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c: CSAC
Attn: Karen Keene

KF:mcv
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