



STATE WETLAND DEFINITION AND PROCEDURES
FOR DISCHARGES OF DREDGED OR FILL
MATERIAL TO WATERS OF THE STATE

Board Item 8

March 5, 2019

Overview of Presentation

- Activities since January 3, 2019 Public Release
- Clarifications to the January 2019 Procedures
- Stakeholder Requested Policy Alternatives
- Next Steps for Today's Workshop

Activities since January 3, 2019 Public Release

- January 3 - Release of Documents for Public Review
- January 9 – Staff Workshop (San Diego)
- January 22 – Board Workshop (Sacramento)
- February 6 – Staff Workshop (Sacramento)
- Stakeholder Meetings
- February 22 – Documents Released for Public Review
 - Clarifications to Procedures
 - Stakeholder Requested Policy Alternatives

Clarifications to the January 2019 Procedures

- Clarifications to Procedures released on February 22
 - Staff's recommendation
- Stakeholder Requested Policy Alternatives are based on clarifications made to January 2019 Procedures
- Alternatives Analysis
 - To qualify for exemption the project must meet the Corps' regional terms and conditions for Corps' general permits
 - Routine operation and maintenance – limited to on-site alternatives
- Compensatory Mitigation
 - May include restoration, enhancement, establishment and preservation

Stakeholder Negotiated – Operation and Maintenance (Policy Topic 1)

Does the Board want to provide a procedural exclusion for certain operation and maintenance activities?

- **Option A: Add a procedural exclusion for certain operation and maintenance activities**

Stakeholder-negotiated language presented by representatives from the Association of California Water Agencies and stormwater agencies working group, and Defenders of Wildlife, Sierra Club, Citizens Committee to Complete the Refuge, and Center for Biological Diversity.

Stakeholder Negotiated – Operation and Maintenance (Policy Topic 1)

Option A: Add a procedural exclusion for certain operation and maintenance activities

*Section II.2, Footnote 3: “Created by modification of a surface water of the state” means that the wetland that is being evaluated was created by modifying an area that was a water of the state at the time of such modification. It does not include a wetland that is created in a location where a water of the state had existed historically, but had already been completely eliminated at some time prior to the creation of the wetland. **The wetland being evaluated does not become a water of the state due solely to a diversion of water from a different water of the state.***

...

*Section IV.D.1.c. Routine **and emergency** operation and maintenance activities **conducted by public agencies, water utilities, or special districts** that result in discharge of dredged or fill material to **artificial, existing artificially-created** waters **of the state** currently used and maintained primarily for:*

- i. one or more of the purposes listed in section II.3.d **(ii), (iii), (iv), (x), or (xi); or***
- ii. **preserving the line, grade, volumetric or flow capacity within the existing footprint of a flood control or stormwater conveyance facility.***

This exclusion does not relieve public agencies, water utilities or special districts of their obligation and responsibility to avoid and minimize adverse impacts to aquatic resources and beneficial uses. This exclusion does not apply to the discharge of dredged or fill material to ~~(a) a water of the U.S., (b) a water specifically identified in a water quality control plan, (c) a water created by modification of a water of the state, or (d)~~ a water **of the state** approved by an agency as compensatory mitigation.

Rice Fields (Policy Topic 2)

Staff recognizes the need to modify the Procedures for rice fields

- **Option A: Exclude rice fields from being a water of the state**
 - Exclude rice fields that are not waters of the U.S. from jurisdiction. Rice fields that are waters of the U.S. would receive a procedural exclusion.
- **Option B: Provide procedural exclusion for rice fields**
 - **Version 1** - State that rice fields may not have beneficial uses designated through the basin plan; avoid regulating discharges to rice fields through waste discharge requirements; exempt all artificially constructed rice fields from jurisdiction, and exclude rice fields from application procedures.
- **Option C: Provide procedural exclusion for rice fields**
 - **Version 2** - State that rice fields do not have beneficial uses designated through the basin plan other than wildlife (WILD); avoid regulating discharges to rice fields through waste discharge requirements; exempt all artificially constructed rice fields from jurisdiction, except for those that are considered a water of the United States, and exclude rice fields from application procedures.

Wetland Jurisdictional Framework (Policy Topic 3)

Does the Board want to revise the jurisdictional framework to exclude certain wetlands that modified an existing water of the state?

- **Option A:** Revise jurisdictional framework to include only wetlands created by modification of an existing water of the state on or after a certain date (1949 or 1969)
 - 1949 Dickey Water Pollution Control Act
 - 1969 Porter-Cologne Water Quality Control Act

Restoration Plan Approval (Policy Topic 14)

Does the Board want to provide additional timing flexibility to restoration plans for temporary impacts?

- **Option A:** Allow discretion as to when the final restoration plan for temporary impacts may be approved

Memorandum of Understanding (MOU) Approval Process (Policy Topic 19)

Does the Board want to add a requirement that there will be a public meeting for any future MOUs with state agencies?

- **Option A:** Add a requirement that there will be a public meeting for any future MOUs with state agencies

Stakeholder Requested Policy Alternatives

- Rice (Policy Issue 2)
- Stakeholder Negotiated – Operation and Maintenance (Policy Issue 1)
- Alternatives Analysis (Policy Issues 4, 5 & 6)
- Compensatory Mitigation (Policy Issues 10, 11, 12 & 13)
- Agriculture (Policy Issues 7, 8 & 9)
- Climate Change (Policy Issue 18)
- New Applications/Effective Date (Policy Issues 16 & 17)
- EREPs (Policy Issue 20)
- Other Procedural Elements (Policy Issues 3, 14, 15 & 19)
- Other Policy Issues