

# DREDGE OR FILL PROCEDURES POLICY CHANGES

Below are different policy issues and policy changes that reflect a variety of options to address stakeholder concerns. Following this summary is the language that would implement those policy changes. The following policy language is based on the clarifying edits to the January 3 public draft Procedures that were released on February 22, 2019.

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## STAKEHOLDER-NEGOTIATED LANGUAGE

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

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

Note that this option presents language that was negotiated among 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.

*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 CULTIVATION

2. Staff recognizes the need to modify the Procedures for rice fields.

A: Exclude rice fields from being a water of the state (all three changes)

*Section II: add a new footnote to wetland jurisdictional framework: **Fields used for the cultivation of rice (including wild rice) that have not been abandoned due to five consecutive years of non-use for the cultivation of rice (including wild rice) shall not be considered a water of the state under this Policy.***

**This exception does not apply to rice fields that are considered a water of the United States by the US EPA or the Corps.**

II.3. Artificial wetlands that meet any of the following criteria...

II.3. d. Greater than or equal to one acre in size, unless the artificial wetland was constructed, and is currently used and maintained, primarily for one or more of the following purposes (i.e., the following artificial wetlands are not waters of the state unless they also satisfy the criteria set forth in 2, 3a, or 3b):...

Section II.3.d. **xii. Fields flooded for rice growing**

IV.D. Additional areas excluded from application procedures in sections IV.A and IV.B:

Section IV.D.2.c. **Fields used for the cultivation of rice (including wild rice) that meet all of the following criteria:**

- i. **are, or have been, in rice cultivation (including wild rice) within the last five years [as of the adoption date of these Procedures];**
- ii. **have not been abandoned due to five consecutive years of non-use in rice production; and,**
- iii. **are not being converted to a non-agricultural use.**

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B: Provide a procedural exclusion for rice fields – Version 1 (all three changes)

State that rice fields do 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.

Section II: add a new footnote to wetland jurisdictional framework: **Fields used for the cultivation of rice (including wild rice) that have not been abandoned due to five consecutive years of non-use for the cultivation of rice (including wild rice) that are determined to be a water of the state in accordance with these Procedures shall not have designated beneficial use designations applied to them through the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, except as otherwise required by federal law for fields that are considered to be waters of the United States. Further, agricultural inputs legally applied to fields used for the cultivation of rice (including wild rice) shall not constitute a discharge of waste to a water of the state.**

...

II.3. Artificial wetlands that meet any of the following criteria...

II.3. d. Greater than or equal to one acre in size, unless the artificial wetland was constructed, and is currently used and maintained, primarily for one or more of the following purposes (i.e., the following artificial wetlands are not waters of the state unless they also satisfy the criteria set forth in 2, 3a, or 3b):...

**II. 3.d.xii. Fields flooded for rice growing**

...

IV.D. Additional areas excluded from application procedures in sections IV.A and IV.B:

**IV.D.3. Wetlands that meet all of the following criteria:**

- i. **are, or have been, in rice cultivation (including wild rice) within the last five years [as of the adoption date of these Procedures];**
- ii. **have not been abandoned due to five consecutive years of non-use in rice production; and,**
- iii. **are not being converted to a non-agricultural use.**

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C: Provide a procedural exclusion for rice fields – Version 2 (all three changes)

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.

*Section II: add a new footnote to wetland jurisdictional framework: **Fields used for the cultivation of rice (including wild rice) that have not been abandoned due to five consecutive years of non-use for the cultivation of rice (including wild rice) that are determined to be a water of the state in accordance with these Procedures shall not have designated beneficial use designations other than wildlife (WILD), as appropriate, applied to them through the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, except as otherwise required by federal law for fields that are considered to be waters of the United States. Further, agricultural inputs legally applied to fields used for the cultivation of rice (including wild rice) shall not constitute a discharge of waste to a water of the state, except as otherwise required by federal law. Agricultural inputs that discharge to a surface water other than the rice field or groundwater may be considered a discharge of waste and are subject to waste discharge requirements or waivers of such requirements pursuant to the Water Board's authority to issue or waive waste discharge requirements or take other actions as applicable.***

...

II.3. Artificial wetlands that meet any of the following criteria...

II.3. d. Greater than or equal to one acre in size, unless the artificial wetland was constructed, and is currently used and maintained, primarily for one or more of the following purposes (i.e., the following artificial wetlands are not waters of the state unless they also satisfy the criteria set forth in 2, 3a, or 3b):

...

**II. 3.d.xii. Fields flooded for rice growing**

...

IV.D.2. Additional areas excluded from application procedures in sections IV.A and IV.B:

**IV.D.2.c. Fields used for the cultivation of rice (including wild rice) that meet all of the following criteria:**

- i. are, or have been, in rice cultivation (including wild rice) within the last five years [as of the adoption date of these Procedures];**
- ii. have not been abandoned due to five consecutive years of non-use in rice production; and,**
- iii. are not being converted to a non-agricultural use.**

**PROPOSED CHANGE TO JURISDICTIONAL FRAMEWORK**

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

A: Revise jurisdictional framework to include only wetlands created by modification of an existing water of the state on or after a certain date

*II. 2. Wetlands created by modification of a surface water of the state **on or after [either 1949 or 1969],***

**ALTERNATIVES ANALYSIS**

4. Does the Board want to modify the proposed alternatives analysis exemptions for Corps general permits?

Note that the following changes (A through E) lay out a range of options that are not mutually exclusive.

A: Expand the alternatives analysis exemption to all Corps General Permits

~~IV.A.1.g.i. The project includes discharges to waters of the state outside of federal jurisdiction, but the entire project, which may include discharges to waters of the state outside of federal jurisdiction, would meet the terms and conditions of one or more **Water Board certified** Corps' General Permits, including any Corps District's regional terms and conditions, if all discharges were to waters of the U.S. The permitting authority will verify that the entire project would meet the terms and conditions of the Corps' General Permit(s) if all discharges, including discharges to waters of the state outside of federal jurisdiction, were to waters of the U.S. based on information supplied by the applicant.~~

~~**IV.A.g.ii. The project meets the terms and conditions for coverage under an uncertified Corps' General Permit. This exemption does not apply if the project will directly impact:**~~

~~**a) more than two-tenths (0.2) of an acre or 300 linear feet of waters of the state;**~~

~~**b) rare, threatened, or endangered species habitat in waters of the state;**~~

~~**c) wetlands or eel grass beds; or**~~

~~**d) Outstanding National Resource Waters or Areas of Special Biological Significance.**~~

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B: Expand the exemption for uncertified Corps General Permits to apply to all waters, not just waters of the U.S.

IV.A.1.g.ii. ~~The project includes only discharges to waters of the U.S. and meets~~ **The entire project, which may include discharges to waters of state outside of federal jurisdiction, would meet** the terms and conditions for coverage under an uncertified Corps' General Permit, including any Corps District's regional terms and conditions, **if all discharges were to waters of the U.S. The permitting authority will verify that the entire project would meet the terms and conditions of the uncertified Corps' General Permit(s) if all discharges, including discharges to waters of the state outside of federal jurisdiction, were to waters of the U.S. based on information supplied by the applicant.**

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C: Modify one or more sideboards for uncertified Corps General Permits to decrease the number of projects required to do an alternatives analysis

IV.A.1.g.ii. *The project includes only discharges to waters of the U.S. and meets the terms and conditions for coverage under an uncertified Corps' General Permit, including any Corps District's regional terms and conditions. This exemption does not apply if the project will directly impact:*

- a) more than ~~five~~ **two-tenths (0.2 0.5)** of an acre or 300 linear feet of waters of the state;
- b) **waters of the state that are occupied by** rare, threatened, or endangered species ~~habitat in waters of the state;~~
- c) ~~wetlands or~~ eel grass beds; or
- d) Outstanding National Resource Waters or Areas of Special Biological Significance.

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D: Add one or more additional sideboards that would increase the number of projects required to do an alternatives analysis

IV.A.1.g.ii. *The project includes only discharges to waters of the U.S. and meets the terms and conditions for coverage under an uncertified Corps' General Permit, including any Corps District's regional terms and conditions. This exemption does not apply if the project will directly impact:*

- a) more than two-tenths (0.2) of an acre or 300 linear feet of waters of the state;
- b) rare, threatened, or endangered species habitat in waters of the state;
- c) wetlands or eel grass beds; ~~or~~
- d) Outstanding National Resource Waters or Areas of Special Biological Significance;
- e) **projects that are required to submit pre-construction notification to the Corps;**
- f) **high conservation value sub-watersheds as identified in California's Freshwater Conservation Blueprint or other similar planning document; or**
- g) **Headwater streams, defined as first- to third-order streams.**

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E: Remove the exemption for uncertified Corps General Permits in its entirety

~~IV.A.1.g.ii. The project meets the terms and conditions for coverage under an uncertified Corps' General Permit. This exemption does not apply if the project will directly impact:~~

~~a) more than two tenths (0.2) of an acre or 300 linear feet of waters of the state;~~

~~b) rare, threatened, or endangered species habitat in waters of the state;~~

~~c) wetlands or eel grass beds; or~~

~~d) Outstanding National Resource Waters or Areas of Special Biological Significance.~~

5. Does the Board want to further limit the applicability of the rebuttable presumption?

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A: Remove rebuttable presumption for all non-vegetated wetlands

~~IV.B.3.b. ...The permitting authority shall not apply the presumption set forth in the State Supplemental Dredge or Fill Guidelines, section 230.10(a)(3) to any **non-vegetated wetlands waters of the U.S. that the Corps does not classify as a special aquatic site (as defined in subpart E of U.S. EPA's section 404(b)(1) Guidelines).**~~

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B: Remove rebuttable presumption to projects that have a combination of federal and non-federal waters

~~IV.B.3.b. ... **Where a proposed project includes only federal waters, or a combination of federal and non-federal waters of the state,** the permitting authority shall not apply the presumption set forth in the State Supplemental Dredge or Fill Guidelines, section 230.10(a)(3) to any **non-vegetated waters of the U.S. features** that the Corps does not classify as a special aquatic site (as defined in subpart E of U.S. EPA's section 404(b)(1) Guidelines).~~

6. Does the Board want to state that LEDPA requirements apply to all projects notwithstanding an alternatives analysis exemption?

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A: Add express statement that the permitting authority can require other actions to demonstrate the project is the LEDPA

~~IV. A.1.g. An alternatives analysis,<sup>12</sup> unless any of the following exemptions apply. **An exemption from the alternatives analysis requirement does not preclude a permitting authority from requiring the applicant to demonstrate in its application that the project does not violate the restrictions on discharge in section 230.10 of the State Supplemental Dredge or Fill Guidelines.**~~

PROCEDURAL EXCLUSIONS

7. Does the Board want to change how the Procedures treat prior converted cropland?

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A: Revise language to explicitly include language regarding abandonment

*IV.D.2.a. Wetland areas that qualify as prior converted cropland (PCC) within the meaning of 33 CFR §328.3(b)(2). The applicant may establish that the area is PCC by providing relevant documentary evidence that the area qualifies as PCC **and has not been abandoned due to five consecutive years of non-use for agricultural purposes**, or by providing a current PCC certification by the Natural Resources Conservation Service, the Corps, or the U.S. EPA to the permitting authority.*

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B: Eliminate language on conversion to a non-agricultural use

~~*IV.D.2.a... This exclusion does not apply to discharges of dredged or fill material that convert the wetland areas to a non-agricultural use.*~~

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C: Delete exclusion for PCC and apply only 404(f) exclusion to all agricultural activities

~~*IV.D.2.a Wetland areas that qualify as prior converted cropland (PCC) within the meaning of 33 CFR section 328.3(b)(2). The applicant may establish that the area is PCC by providing relevant documentary evidence that the area qualifies as PCC or by providing a current PCC certification by the Natural Resources Conservation Service, the Corps, or the U.S. EPA to the permitting authority. This exclusion does not apply to discharges of dredged or fill material that convert the wetland areas to a non-agricultural use.*~~

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D: Remove PCC status upon abandonment or conversion to a use other than the production of an agricultural commodity

Note: This language is substantially similar to the language in the 2017 draft of the Procedures.

~~*IV.D.2.a Wetland areas that qualify as prior converted cropland (PCC) within the meaning of 33 CFR section 328.3(b)(2). The applicant may establish that the area is PCC by providing relevant documentary evidence that the area qualifies as PCC or by providing a current PCC certification by the Natural Resources Conservation Service, the Corps, or the U.S. EPA to the permitting authority. This exclusion will no longer apply if the wetland area changes to a non-agricultural use.*~~

***IV.D.2.a Discharges of dredged or fill material that occur within prior converted croplands (PCC) that have been certified by the Natural Resource Conservation Service or the Corps. The PCC exclusion will no longer apply if the PCC is abandoned or proposed for conversion to any use other than production of an agricultural commodity.***

***1. For purposes of D.2(a), agricultural commodity means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane. The term planted shall include cropping, management and maintenance activities related to agricultural production.***

***2. For purposes of D.2(a) abandoned means the PCC is not planted to an agricultural commodity for more than five consecutive years and wetland characteristics return, and the land was not left idle in accordance with a USDA program.***

8. Does the Board want to constrain regulation of dredge and fill activities on agricultural lands to only these Procedures?

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A: Add express statement that discharges of dredged or fill material related to agriculture that are excluded from the Procedures will not be regulated

The Procedures are intended to govern dredge and fill activities permitted by the Corps of Engineers under Clean Water Act Section 404. However, the Water Boards can and do have other permitting programs that address dredge or fill activities in other contexts (e.g. our forestry program addresses dredge and fill activities related to road building in timber harvest projects that are excluded from 404 permitting). In addition, the Procedures are explicitly focused on individual applications, and do not apply to general orders. Thus, it is feasible that the Water Boards could continue to regulate dredge or fill activities outside of these Procedures. The Agriculture industry has requested that we make the Procedures explicit that the Procedures be the sole regulatory approach on agricultural lands.

*Section IV.D: ...These exclusions do not, however, affect the Water Board's authority to issue or waive waste discharge requirements (WDRs) or take other actions **to address issues other than the discharge of dredged or fill material related to agriculture** for the following activities or areas to the extent **otherwise** authorized by the Water Code.*

9. Does the Board want to provide a new procedural exclusion for agricultural areas?

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A: New exclusion based on language from preamble to 1986 Waters of the U.S. rule

***IV.D.2.c. Non-tidal drainage and irrigation ditches excavated on dry land; artificially irrigated areas that would revert to upland if irrigation ceases; artificial lakes or ponds created by excavating or diking dry land to retain water for such purposes as stock watering, irrigation, settling basins, [or rice growing]; or depressions created in dry land incidental to construction or for the purposes of obtaining fill, sand or gravel.***

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B: Extend regulatory relief for rice fields to any agricultural crop that requires wetland conditions for cultivation

Actual language dependent on policy decision re: rice. Add “or any agricultural crop that requires wetland conditions for cultivation” to the language in issue #2.

## COMPENSATORY MITIGATION

10. Does the Board want to allow for a reduction of the one-to-one compensatory mitigation ratio?

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A: Allow for less than one-to-one compensatory mitigation ratio based on condition assessment (restore 2017 language)

*IV.B.5.c.: ... **A minimum of one-to-one acreage or length of stream reach replacement is necessary to compensate for wetland or stream losses unless an appropriate function or condition assessment method clearly demonstrates, on an exceptional basis, that a lesser amount is sufficient.***

*~~IV.B.5.c: A minimum of one to one mitigation ratio, measured as area or length, is required to compensate for wetland stream losses when compensatory mitigation is required.~~*

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B: Allow for less than one-to-one compensatory mitigation ratio in certain circumstances

*IV.B.5.c, footnote 14: ~~For temporary impacts, the minimum one-to-one mitigation ratio for wetland or stream losses is not applicable for temporal losses for impacts that are fully restored to pre-project conditions.~~ **Where project impact mitigation already has occurred (e.g., pursuant to another Order, permit or authorization issued by an agency with the primary function of protecting wetlands or riparian habitat or habitat for rare, threatened or endangered species), or where a project is self-mitigating, meaning that the overall improvement in aquatic resources and beneficial uses provided by the project and all proposed restoration measures offset the project’s significant adverse impacts to the water of the state.***

11. Does the Board want to specify the types of financial securities that must be accepted for public agencies?

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A: Specifically identify the types of financial securities that must be accepted for compensatory mitigation

*IV.B.5.f. Financial Security: Where deemed necessary by the permitting authority, provision of a financial security (e.g., letter of credit or performance bond) shall be a condition of the Order. In this case, the permitting authority will approve the financial security to ensure compliance with compensatory mitigation plan requirements. The financial security shall be in a form consistent with the California*

Constitution and state law. **In light of state law, in the event that the long-term management entity is a public authority or governmental agency, the following long-term financial assurances shall be accepted by the permitting authority from such entities:**

**i. A formal, documented commitment to long-term funding of compensatory mitigation plan requirements approved by the governing body; or**

**ii. In the case of an agency for governed by a council, board or commission, a formal documented commitment approved by agency's chief executive officer, manager or director.**

**In the event that the public authority or governmental agency fails to appropriate the funds outlined in the commitment, the permitting authority, after providing written notice and a reasonable opportunity to cure, may void a public authority's or governmental agency's adopted commitment to long-term funding, and require alternative financial assurances for implementation of the compensatory mitigation plan requirements.**

12. Does the Board want to allow the Regional Board to approve the use of pre-existing watershed plans, regardless if they meet all of the specific requirements of the definition?

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A: Revise definition of Watershed Plan

Section V. [Definition of Watershed Plan] ... Watershed Plan means a document, or set of documents, developed in consultation with relevant stakeholders, **with a primary goal of for the specific goal of aquatic resource restoration, establishment, enhancement, and preservation within a watershed.**

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B: Add flexibility in the definition of a Watershed Plan that allows the Regional Board to approve the use of pre-existing plans, regardless if they meet all of the specific requirements of the definition

Section V. [Definition of Watershed Plan] ... **The Executive Officer or Executive Director may, in writing, approve the use of a watershed plan that does not meet the specific requirements stated above if it was created prior to the effective date of the Procedures.**

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C: Add flexibility in the definition of a Watershed Plan that allows the Regional Board to approve the use of pre-existing plans, if they substantially comply with the definition

Section V. [Definition of Watershed Plan] ... **The Executive Officer or Executive Director may, in writing, approve the use of a watershed plan that substantially complies with the specific requirements stated above if it was created prior to the effective date of the Procedures.**

13. Does the Board want to add additional timing flexibility to compensatory mitigation plans?

A: Allow discretion as to when the final compensatory mitigation plan may be approved

*IV.B.5.e. ... Generally, the permitting authority will approve the final compensatory mitigation plan when it issues the Order. Where compliant with CEQA, the permitting authority may approve the final compensatory mitigation plan after it issues the Order. ~~In such cases the permitting authority shall include as a condition of the Order that the applicant receive approval of the final mitigation plan prior to discharging dredged or fill material to waters of the state and shall specify a process for approving the final mitigation plan.~~*

...

*State Supplemental Guidelines, section 230.94(c)(1)(i) For individual Orders, the permittee must prepare a draft mitigation plan and submit it to the permitting authority for review prior to issuing the Order. After addressing any comments provided by the permitting authority, the permittee must prepare a final mitigation plan, ~~which must be approved by the permitting authority prior to commencing work in waters of the state.~~*

## OTHER PROCEDURAL ELEMENTS

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

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

*IV.A.2.d. ... ~~Prior to issuance of the Order, t~~The applicant shall submit a final restoration plan that describes the restoration of all temporarily disturbed areas to pre-project conditions, consistent with section IV.B.4.*

...

*IV.B.4. ~~Prior to or concurrent with issuance of the Order, the permitting authority will approve the final restoration plan for temporary impacts.~~ Generally, the permitting authority will approve the final restoration plan when it issues the Order. The permitting authority may approve the final restoration plan after it issues the Order. In such cases the permitting authority shall include as a condition of the Order that the applicant receive approval of the final restoration prior to initiating the temporary impacts and shall specify a process for approving the final restoration plan.*

15. Does the Board want to remove the case-by-case requirement for wet season supplemental data to substantiate dry season delineations?

A: Delete the case-by-case requirement for supplemental data for dry season delineations

~~**IV.A.2.a. If required by the permitting authority on a case-by-case basis, supplemental field data from the wet season to substantiate dry season delineations, as is consistent with the 1987 Manual and Supplements.**~~

B: Preclude the permitting authority from requiring supplemental data for dry season delineations

*Section III: ... A delineation of any wetland areas potentially impacted by the project that are not delineated in a final aquatic resource report verified by the Corps shall be performed using the methods described in the three federal documents listed below (collectively referred to as "1987 Manual and Supplements") to determine whether the area meets the state definition of a wetland as defined above, **except that supplemental field data from the wet season to substantiate dry season delineations shall not be required.***

...

~~**IV.A.2.a. If required by the permitting authority on a case-by-case basis, supplemental field data from the wet season to substantiate dry season delineations, as is consistent with the 1987 Manual and Supplements.**~~

16. Does the Board want to give discretion to require applications for extensions, renewals, or reissuances of existing Orders?

A: Allow the permitting authority not to require an application where there is an extension, renewal, or reissuance of an existing Order

*Section IV. ... **If not otherwise excluded, this application requirement applies to new discharges not already addressed by an Order, proposed material changes in the character, location, or volume of existing discharges, and upon renewal of existing Orders for existing discharges. The permitting authority may amend, extend, renew, or reissue an existing Order solely for the purposes of extending the expiration date without requiring a new application under Sections IV.A and IV.B when there are no material changes to the character, location, and volume of discharges authorized by the existing Order.***

17. Does the Board want to limit how the Procedures apply to applications submitted prior to the effective date?

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A: Limit the applicability of the application procedures to applications submitted prior to the effective date

*Section IV. ... This section applies to all applications for discharges of dredged or fill material to waters of the state submitted after [insert date that is six months after approval by the Office of Administrative Law]. **If an application for the discharge of dredged or fill material to waters of the state has been submitted (including the payment of applicable fees) to the permitting authority prior to the effective date and the applicant has made a good faith effort to respond to any notification from the permitting authority that such application is not complete under then-current application requirements, then these Procedures shall not apply to such application provided such application is determined or deemed to be complete within 180 days from the effective date of these Procedures. This section shall not apply to extensions of or minor amendments to orders authorizing discharges of dredged or fill material to waters of the state issued by a Water Board prior to the effective date. [FN: Minor amendments are ones that do not increase direct impacts to waters of the state by more than 0.5 acre and do not increase direct impacts to wetlands, as defined in Section II, or to any unvegetated playas, natural tidal flats, or natural pools by more than 0.1 acre.]***

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B: Do not apply the Procedures to complete applications submitted prior to the effective date

*Section IV. This section applies to all applications for discharges of dredged or fill material to waters of the state submitted after [insert date that is six months after approval by the Office of Administrative Law]. **The Procedures do not apply to applications that are submitted prior to the effective date and are deemed complete.***

18. Does the Board want to change the Procedures approach to climate change?

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A: Require a climate change analysis in all cases

Note: this would replace the currently proposed climate change language in section IV.A.2. (additional information required on a case by case basis) with broader language that would apply to all projects in every case.

**IV.A.1.i. An assessment of the potential impacts associated with climate change related to the proposed project and any proposed compensatory mitigation, and any measures to avoid or minimize those potential impacts.**

...

~~**IV.A.2.b.viii. If required by the permitting authority, an assessment of reasonably foreseeable impacts to the compensatory mitigation associated with climate change, and any measures to avoid or minimize those potential impacts.**~~

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B: Restore Procedures' 2017 language that requires a climate change analysis on a case-by-case basis

This would replace the currently proposed climate change language in Section IV.A.2., which limits climate change analysis to just reasonably foreseeable impacts to mitigation (on a case by case basis) with a case by case requirement for a climate change analysis that would cover the project and it's mitigation.

~~**IV.A.2.b.viii. If required by the permitting authority, an assessment of reasonably foreseeable impacts to the compensatory mitigation associated with climate change, and any measures to avoid or minimize those potential impacts.**~~

...

**IV.A.2.f. If required by the permitting authority on a case by case basis, an assessment of the potential impacts associated with climate change related to the proposed project and any proposed compensatory mitigation, and any measures to avoid or minimize those potential impacts.**

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C: Delete climate change analysis requirements outright

~~**IV.A.2.B.viii. If required by the permitting authority, an assessment of reasonably foreseeable impacts to the compensatory mitigation associated with climate change, and any measures to avoid or minimize those potential impacts.**~~

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D: Direct staff to develop guidance on assessment of climate change

Add the following direction to staff in the Resolution (Note that this could be accomplished independent of any other changes):

***Direct staff to work with stakeholders to develop guidance regarding how to conduct a climate change analysis as required the Procedures.***

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

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

*Section IV. Footnote 8: In cases where the applicant is a state agency and is acting as the CEQA lead agency for one or more projects otherwise subject to this section, and that state agency is a party to an existing written agreement (e.g., memorandum of understanding) with the State Water Board that sets out alternative procedures and requirements regarding the submission, review, or approval of project applications, the permitting authority shall apply the terms and conditions of the agreement in lieu of the terms and conditions of this section. **After the adoption of these Procedures**, the State Water Board*

may also enter into such written agreements ~~after the adoption of these Procedures~~ **after consideration at a public meeting**; such an agreement may include, for example, early consultation regarding potential project applications, early identification and analysis of project alternatives and mitigation measures, and dispute resolution. Any written agreements, whether existing or entered into after the adoption of these Procedures, may be amended in writing at any time by joint agreement of the parties, and such amended agreements shall govern in lieu of the terms and conditions of this section. All other applicable laws, including requirements for public notice and comment, apply to the permitting authorities' approval of projects under such an agreement.

## 20. Does the Board want to revise definition of EREPs to be more inclusive?

### A: Allow compensatory mitigation projects to qualify as an EREP

Section V. Ecological Restoration and Enhancement Project means the project is **voluntarily** undertaken for the purpose of assisting or controlling the recovery of an aquatic ecosystem that has been degraded, damaged or destroyed to restore some measure of its natural condition and to enhance the beneficial uses, including potential beneficial uses of water.

Such projects are undertaken:

- 1) in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the real property interest owner and:
  - a. a federal or state resource agency, including, but not limited to, the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Forest Service, U.S. Bureau of Land Management, California Department of Fish and Wildlife, California Wildlife Conservation Board, California Coastal Conservancy or the Delta Conservancy;
  - b. a local agency with the primary function of managing land or water for wetland habitat purposes; or
  - c. a non-governmental conservation organization; or
- 2) by a state or federal agency that is statutorily tasked with natural resource management.

These projects do not include the conversion of a stream or natural wetland to uplands or stream channelization. It is recognized that Ecological Restoration and Enhancement Projects may require ongoing maintenance or management to maximize fish, wildlife, habitat, or other ecological benefits, or filling gullied stream channels and similar rehabilitative activities to re-establish stream and meadow hydrology. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during rehabilitation activities are not considered a conversion to another aquatic habitat type.

These projects also do not include ~~actions required under a Water Board Order for mitigation, actions to service required mitigation, or~~ actions undertaken for the primary purpose of land development.