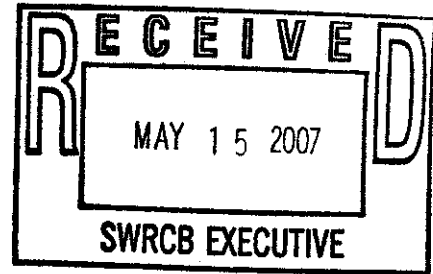


ATTN: Song Her
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FROM: The Public Trust Alliance
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COMMENTS RE WETLAND AND RIPARIAN AREA PROTECTION POLICY
May 14, 2007

The mission of the Public Trust Alliance is to assure responsible stewardship for our most precious public resources so they will continue to be available for a liveable future. We want to make sure there is enough clean air to breathe and pure water to drink so our children and our children's children will be able to live meaningful and healthy lives. We support the fourth proposed alternative for managing our heritage wetlands, along with precautionary regulation of activities in riparian zones. Our laws have always placed reasonable limits on private actions directly impacting public rights. We simply cannot continue to build houses and other structures, dig, cut roads and trees or draft "insignificant" water supplies with reckless abandon in areas known to be essential for supporting public water resources and their many "ecological services" which support us all.

Not so long ago, the California Supreme Court proclaimed: "The Public Trust Doctrine is an affirmation of the duty of the state to protect the people's common heritage in streams, lakes, marshlands and tidelands." When the Department of Water Resources prepared its 2005 update of the California Water Plan, an active Public Advisory Committee ensured that one of its 14 major recommendations was that "DWR and other State agencies should explicitly consider public trust values in the planning and allocation of water resources and protect public trust uses whenever feasible." Today, the scope of environmental impacts of implementing new wetlands policies will depend on the degree to which this Board lives up to its already existing legal obligations. The State Water Resources Control Board has always served as a public trustee. Likewise, water users hold any private rights subject to the same public trust. As a public trustee, this board has an affirmative legal duty protect our water resources in suitable condition for healthy public use.

This responsibility becomes ever more pressing as the last remaining natural wetlands are inappropriately sacrificed to short term private gain and we are learning that attempted artificial mitigations rarely replace the natural services lost. Under current management policies, total loss of public trust values in our last remaining wetland and riparian systems is not only reasonably foreseeable, it is predictable with almost total

confidence. And now, the best knowledge publicly available has us understanding that patterns and quantities of water flows will be changing with a changing climate. Absolute property rights to water that does not now appear in nature or will not actually be available make absolutely no sense.

In the few years since the California Supreme Court reaffirmed the trust duties of California Water regulators, the people of California have suffered the environmental consequences of an extreme abdication of public stewardship responsibility by Federal agencies and totally inappropriate pressure by private actors to extend private property rights to the point where they are claimed to allow the complete loss of historic public rights. A group of property owners on the shore of Lake Tahoe recently circulated a flyer that said if they weren't granted additional development concessions "their" property would be taken. Aggregate miners and vinyard owners are also extending private claims at public cost.

The sheer scale of inappropriate private encroachment on public water resources makes a credible response from public trustees absolutely essential so that all participants can grasp the seriousness of the situation. Extractive industries and urban growth simply cannot be accommodated on the terms that earlier owners expected when our last public resources are at stake. Continued abdication of public responsibility is not a viable strategy and will leave a wasteland for future generations. The trust responsibilities of the State to protect natural resources are not just Legislative guidelines. These obligations operate on a constitutional dimension and we expect this Board to acknowledge and respect the profound public rights involved. No amount of legal sophistry regarding particular standards can erode State duties to maintain public waters in suitable condition for healthy public use.

Thanks for this opportunity for us to comment on a constructive approach to meeting these public responsibilities.

Sincerely,

Michael Warburton
Executive Director