Procedures for Discharges of Dredged or Fill Material to Waters of the State

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San Diego Regional Water Quality Control Board
Public Staff Workshop

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Today’s Presentation

• Overview of the Procedures
• Comments Received on 2017 draft Procedures
• Proposed Revisions
• Questions?
Overview of the Procedures

• Main elements:
  o Wetland Definition
  o Wetland Jurisdictional Framework
  o Wetland Delineation Procedures
  o Procedures: Application Submittal and Review Requirements for all Waters, Not Just Wetlands
2017 Draft Procedures: Main Comments Received

- Wetland Definition
- Wetland Jurisdictional Framework
- Alternatives Analysis
- Case-by-case Determinations
- Compensatory Mitigation
- Prior Converted Cropland
- Procedural Exclusions for Operation and Maintenance Activities
- Ecological Restoration and Enhancement Projects
- Processing Timelines, Water Board Staff Workload, and Compliance Costs
- Overlapping Regulation
- Water Board Regulatory Authority
Introduction, Definition and Delineation

• Introduction
  o Effective Date 6 months after approval by Office of Administrative Law

• Definition – No Change to Definition – Change to “Rebuttable Presumption”
  o Rebuttable presumption set forth in 230.10
  o Will be applied in waters of the U.S. the same as the Corps

• Delineation
  o Change to “verified aquatic resources report”
Wetland Jurisdictional Framework

• Wetlands that are waters of the state:
  o All natural wetlands
  o Wetlands created by a modification of a water of the state
  o Wetland waters of the U.S. (current or historic)
  o Some artificial wetlands
  o Some exceptions – artificial wetlands created for a specific purpose
Wetland Jurisdictional Framework

- Artificial wetlands that resulted from human activity and have become relatively permanent part of the natural landscape, must also “not be subject to ongoing operation and maintenance.”

- Added artificial wetlands that are not considered waters of the state:
  - recycled water treatment, storage, or distribution, industrial processing, or maximizing groundwater recharge
Alternatives Analysis

- Added an exemption for uncertified Corps’ general permits, unless the discharge impacts:
  - more than two-tenths (0.2) of an acre or 300 linear feet of waters of the state,
  - habitat for rare, threatened, or endangered species,
  - wetlands, or eelgrass beds,
  - Outstanding National Resource Waters, or Areas of Special Biological Significance.

- Revised language to refer to impacts from the “discharge or dredged or fill material” rather than the “project.”
Alternatives Analysis

• Revised list of features from “bog, fen, playa, seep wetland, vernal pool, headwater creek, eelgrass bed, anadromous fish habitat, or habitat for rare, threatened or endangered species” to “habitat for rare, threatened or endangered species, wetlands or eelgrass beds, Outstanding National Resource Waters or Areas of Special Biological Significance.”

• Removed language allowing the permitting authority to accept a lower level of analysis.
Case-by-Case Determinations

• For dry season delineations, clarified that the case-by-case requirement for supplemental field data from the wet season is consistent with the 1987 Manual and Supplements.

• Limited the case-by-case requirement with regard to when a climate change analysis would be required. Climate change analysis may be required for permittee-responsible mitigation to assess reasonably foreseeable impacts associated with climate change and any measures to avoid or minimize those impacts.
Compensatory Mitigation

• Removed the allowance for less than a one-to-one mitigation ratio for wetland or stream losses.

• Revised the compensatory mitigation language to specify that a minimum of one-to-one mitigation “ratio” for wetland or stream losses is necessary (previously language referred to acreage or length).

• Final compensatory mitigation plans may be approved after an Order is issued, but where compliant with CEQA, before discharging to waters of the state.
Prior Converted Cropland

- Deleted abandonment language and instead requires current certification
- Added agencies that can complete certification - NRCS, Corps, or EPA
- Retained: Exclusion will not apply if wetland area changes to non-agricultural use
Procedural Exclusions

• Activities and Areas Excluded from the Application Procedures: removed some expired Corps’ guidance letters that had been incorporated by reference in Table 2.

• Revised the exclusion for routine operation and maintenance activities of “storm water facilities that are regulated under another Water Board Order” to include more types of artificially created waters consistent with the jurisdictional framework.
Definitions Clarified

- Added footnote 11 to clarify rare, threatened, or endangered species
- Added definitions for “Active Surface Mining,” and “Project”
- Revised definition for “Discharge of Dredged or Fill Material”
- Revised definition for “Ecological Restoration and Enhancement Project”
- Removed definition of “riparian” in supplemental procedures
Upcoming Workshop and Meeting

State Water Board Workshop
January 22, 2019
Joe Serna Jr. – Cal/EPA Headquarters Building
Coastal Hearing Room
1001 I Street, Second Floor
Sacramento, CA 95814

Board Meeting to Consider Adoption
February 5, 2019
Joe Serna Jr. – Cal/EPA Headquarters Building
Coastal Hearing Room
1001 I Street, Second Floor
Sacramento, CA 95814

For more information, visit:  www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html
Questions?
# Contact Information

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Waters of the U.S.

- CWA requirement to certify federal permits (401/404)
- Waters of the US is not yet settled
  - SWANCC & Rapanos
  - 2015 Waters of the US Rule
  - 2019 Revised Waters of the US Rule
- “Waters of the state” is more inclusive than “waters of the U.S.”
  - Applies to all waters, including those outside of federal jurisdiction