

Remaining Policy Items

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

Staff Workshop

February 6, 2019

Application Requirements

Section IV. Procedures for Regulation of Discharges of Dredged or Fill
Material to Waters of the State

Alternatives Analysis Exemption for Uncertified Corps' General Permit

Option 1: Remove exemption 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) habitat for rare, threatened, or endangered species;~~
- ~~c) wetlands or eel grass beds; or~~
- ~~d) Outstanding National Resource Waters or Areas of Special Biological Significance.~~

Alternatives Analysis Exemption for Uncertified Corps' General Permit

Option 2: Add additional sideboards that would trigger the alternatives analysis requirement

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) habitat for rare, threatened, or endangered species;
- 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 a 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.

g) Headwater streams, defined as first- to third-order streams.

Alternatives Analysis Exemption for Uncertified Corps' General Permit

Option 3: Do not require an alternatives analysis for projects that impact waters of the state that are under federal jurisdiction

IV.A.1.g.i. The project includes discharges to waters of the state outside of federal jurisdiction, but the entire project would meet the terms and conditions of one or more ~~Water Board certified~~ Corps' General Permits, 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.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) habitat for rare, threatened, or endangered species;~~
- ~~c) wetlands or eel grass beds; or~~
- ~~d) Outstanding National Resource Waters or Areas of Special Biological Significance.~~

Alternatives Analysis Exemption for Uncertified Corps' General Permit

Option 4: Increase the impact quantity threshold and limit the sideboard for habitat

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~~-five-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 habitat for rare, threatened, or endangered species;
- c) ~~wetlands or~~ eel grass beds; or
- d) Outstanding National Resource Waters or Areas of Special Biological Significance.

Alternatives Analysis for Operation and Maintenance of Existing Infrastructure

Require a tier 1 (as opposed to a tier 2) alternatives analysis for routine operation and maintenance of municipal stormwater and flood control activities (avoidance and minimization only)

Rebuttable Presumption

Option 1: Do not apply rebuttable presumption to any features that are not federal wetlands or special aquatic sites

Option 2: Harmonize the wetland definition with Corps' definition and expand the rebuttable presumption language to address additional features, as necessary.

Climate Change Analysis Requirement

Option 1: Require a climate change analysis in all cases

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.

Climate Change Analysis Requirement

Option 2: Restore Procedures' 2017 Language that requires a climate change analysis on a case-by-case basis for projects

IV.A.1.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.

~~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.~~

Climate Change Analysis Requirement

Option 3:

Delete climate change analysis requirements outright

or

Retain the climate change analysis language and request the Board to direct staff to develop guidance on how climate change should be addressed.

Ongoing Operation and Maintenance

Artificial wetlands: Request to define what we mean by “ongoing” operations and maintenance on a temporal basis, in the jurisdictional framework.

Existing Orders

Dischargers with existing applications, but who have not yet had an Order issued are concerned that the application requirements may change mid-stream.

Areas and Activities Excluded from the Application Procedures

Section IV. D.

Prior Converted Cropland (PCC)

Option 1:

~~IV.D.2.a. Wetland areas that are currently certified as prior converted cropland (PCC) by the Natural Resources Conservation Service, the Corps, or the U.S. EPA. This exclusion will no longer apply if the wetland area changes to a non-agricultural use.~~

IV.D.2.a. Wetland areas that qualify as prior converted cropland (PCC) within the meaning of 33 CFR § 328.3(a)(8). The applicant may establish that the area is PCC by providing to the permitting authority (i) relevant evidence that the area qualifies as PCC and has not been abandoned due to five consecutive years of non-use for agricultural purposes, or (ii) a current PCC certification by the Natural Resources Conservation Service, the Corps, or the U.S. EPA.

Prior Converted Cropland (PCC)

Option 2: Remove PCC Exclusion

~~**IV.D.2.a Wetland areas that are currently certified as prior converted cropland (PCC) by the Natural Resources Conservation Service, the Corps, or the U.S. EPA. This exclusion will no longer apply if the wetland area changes to a non-agricultural use.**~~

Prior Converted Cropland (PCC)

Option 3: Remove PCC status upon any conversion to non-wetland compatible agricultural use

~~IV.D.2.a Wetland areas that are currently certified as prior converted cropland (PCC) by the Natural Resources Conservation Service, the Corps, or the U.S. EPA. 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.

i. 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.

ii. 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.

Procedural Exclusion

Request to add a new procedural exclusion

b. 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.

Rice Fields

Option1: Exclude as a water of the state during rice cultivation

New Footnote to wetland definition **“Fields used for the cultivation of rice and that have not been abandoned due to five consecutive years of non-use for the cultivation of rice shall not be considered a wetland (i.e., not a water of the state) under this Policy.”**

Option2: Create Procedural Exclusion that would prevent requiring waste discharge requirements for rice operations or application of beneficial uses within rice fields

Activities Excluded From Regulation

Requested an express statement that the Water Boards will not regulate discharges of dredged or fill material related to agriculture that are excluded from the Procedures.

Definition of Waste

Request to add language to clarify that Dredged or Fill Material may not be waste in all cases.

Modification of Water of the State

Option 1: Clarify that construction of a diversion structure does not constitute modification to a water of the state.

Option 2: Change “modify” to include a specific date, e.g. modified after 1949 (passage of the Dickey Act)

Exclusion for Stormwater and Flood Control Facilities

Revise section IV.D to exclude all municipal stormwater and flood control facilities from the application procedures.