



# Water Boards

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## **Wetlands: Frequently Asked Questions**

The State Water Resources Control Board (State Water Board) is considering a new policy on wetlands. The new policy is designed to protect and enhance California's wetlands, bring consistency to regulatory efforts by the State Water Board and nine Regional Water Quality Control Boards (Water Boards collectively), and to provide a common framework for monitoring and reporting water quality.

### **What is a wetland?**

As defined in the State Water Board's proposed new policy, a wetland is:

- An area that is covered by shallow water or where the surface soil is saturated, either year round or during periods of the year;
- Where that water coverage has caused a lack of oxygen in the surface soil;
- And has either no vegetation or plants of a type that have adapted to shallow water or saturated soil. Some examples are fresh water marshes, bogs, riparian areas, vernal pools, coastal mud flats and salt marshes.

### **Why are they important?**

Wetlands have long been misunderstood, and frequently were considered wasted land. They have been subjected to excavating (dredging) and filling to create urban development, harbors, or farm land, and governments have even offered incentives to fill in wetlands.

In recent decades, however, scientists, government regulatory agencies and policy makers have come to appreciate the huge environmental and economic benefits they offer to the state.

Wetlands are among the most biologically productive areas on earth, nurturing a vast array of life, from microscopic bacteria, insects and worms to migratory birds, otters, reptiles and amphibians. They provide food and cover for migrating fish such as salmon and steelhead as well as other fish species. Marshes, vernal pools, tidal flats and other wetlands provide an oasis for a variety of endangered species, from fairy shrimp to the salt marsh harvest mouse to young Chinook salmon on their way to the ocean.

Wetlands provide flood and storm water control, temporarily storing flood water and detaining water flow in storm events. Wetland vegetation acts as a filter, capturing pollutants that would otherwise degrade groundwater and surface water.

By stabilizing the banks of rivers, lakes and coastal areas, wetlands provide erosion control. They capture carbon dioxide, a greenhouse gas, and they promote nutrient cycling by up-taking and storing nutrients from the soil, which are then processed through the food chain during their life cycle.



Finally, wetlands provide public enjoyment, a place where people can view the variety of plant and animal life, hunt and fish or quietly contemplate the complex ecological interactions that make up a marsh or coastal mud flat.

California has lost more than 90 percent of its wetlands since European discovery, more than any other state. The losses are primarily due to human land uses, including urban and port development, and agriculture. The remaining wetlands are threatened by population growth, land development, sea level rise and climate change.

### **Why is a new policy needed?**

The State Water Board is considering the policy for several important reasons. First, certain waters of the state have lost protection under the federal Clean Water Act due to U.S. Supreme Court decisions that reduced the scope of federal jurisdiction.

Second, the Water Boards do not have a single accepted definition of wetlands that would capture the rich diversity of wetland types throughout the state. That's led to a lack of consistency in wetland regulation and management.

Finally, current regulation of wetlands has not prevented loss in the quantity and quality of wetlands. A policy goal of the State Water Board is to achieve no overall net loss and a long-term net gain in the quantity, quality and diversity of waters of the state, including wetlands.

### **What will the proposed new policy do?**

The policy is expected to add consistency and transparency to the determination of wetland areas, and help resolve potential conflicts in areas of overlapping regulatory jurisdiction. Federal regulation of waterways is through the U.S. Army Corps of Engineers (Corps), and the proposed policy aligns state requirements with the Corps' regulations.

It would add certainty for permit applicants on defining wetlands and requirements for obtaining permits. The policy would also allow consistent monitoring and tracking of trends in state waters, including wetlands, making it easier to protect and manage them.

### **How does it go about doing that?**

By the State Water Board establishing its statewide definition of a wetland, the policy would bring a uniform regulatory approach between the State Water Board and the nine Regional Water Quality Control Boards and quicken permit coordination activity with other agencies involved in protecting wetlands.

It would establish procedures and criteria for the application, review and approval of permits to discharge dredged or fill material to state waters, and it would provide a common framework for wetland and riparian area monitoring and assessment. This will aid in making regulatory decisions and ensure consistency with statewide environmental reporting programs.

**Does the policy create a new regulatory program?**

No. The Water Boards have been regulating wetlands since the State Legislature established the agency in 1967. The Water Boards protect the water quality of our state's rivers, lakes, wetlands and coastal ocean areas by issuing permits for activities that may pollute, degrade, alter or destroy waterbodies. One such permit is for projects that include dredging or filling waterbodies with dirt or other construction material. In reviewing these projects, the Water Boards work jointly with the Corps since both agencies regulate dredge and fill activities. Section 404 of the federal Clean Water Act requires the Corps to regulate dredge and fill discharges to waters of the United States, and further directs the Corps, in section 401, to obtain a state water quality certification. In California, the Water Boards issue the water quality certifications for Corps permits to ensure that the projects comply with the state's water quality control plans. The policy adjusts the regulatory program to make permitting for dredging and fill consistent across all the Water Boards. The requirements in the proposed policy are essentially the same as those required by the Corps.

**What is the difference between the wetlands definition proposed by the State Water Board and that used in the federal Clean Water Act Section 404 regulation of dredged or fill material?**

Both the State Water Board definition and the federal definition include indicators of wetland soil and hydrology. The federal definition also includes an indication of wetland vegetation other than in certain special circumstances.

The proposed State Water Board definition also considers vegetation when present, but it does not require the occurrence of vegetation to call an aquatic resource a wetland. For example, mud flats and playas are ecologically like wetlands, but are not typically vegetated. They will be considered wetlands under the State Water Board definition.

**Why does the proposed State Water Board definition not require an indication of vegetation to call an area a wetland?**

Mud flats and playas in California can provide the same benefits and services as vegetated wetlands. They also function in ways that are similar to vegetated wetlands. The proposed definition clarifies that vegetated and unvegetated wetlands will receive comparable environmental protection.

**Will the different State Water Board and federal definitions complicate the process used to delineate wetlands? Will it lengthen the time needed to determine whether a federal permit and state certification are required?**

No to both questions. The Water Boards and the Corps will require use of the same federal wetland delineation methods. At the end of the delineation process there will be some situations where an assessed aquatic resource is labeled "other waters" for federal delineation purposes and "wetlands" for state delineation purposes.

## **Will the difference in definition expand the area under federal and Water Board jurisdiction of dredged and fill material?**

No. The extent of both federal and Water Board jurisdictions will remain the same as they are today. As mentioned above, there will be circumstances where the type of aquatic resource under federal jurisdiction is given a different name, but the spatial area will not change.

## **Given the fact that the spatial extent of wetlands under existing regulatory authority will remain unchanged, what is the practical purpose for changing the definition?**

The federal Clean Water Act section 404(b)(1) Guidelines list both wetlands and mud flats as types of “special aquatic sites” deserving focused attention in regulatory permitting. However, in the federal permit process unvegetated aquatic areas like mud flats sometimes receive less rigorous attention, and especially in regards to mitigation needs. For the reasons outlined above, and because California has lost so many of its wetlands, the Water Boards generally regulate unvegetated wetlands.

For clarity purposes the Water Boards propose to refine the wetland definition. The proposed change will provide the regulated community greater certainty about the need to avoid impacts to unvegetated wetlands. Also, there will be greater predictability about the requirements to compensate for unavoidable impacts and degradation of that aquatic resource by replacing what is lost.