



2800 Cottage Way, W1916  
Sacramento, CA 9825  
(916) 414-6459  
www.cvjv.org

## CENTRAL VALLEY JOINT VENTURE

### Conserving Bird Habitat in California's Central Valley



September 18, 2017

Audubon California

California Waterfowl  
Association

Defenders of Wildlife

Ducks Unlimited, Inc.

Point Blue Conservation  
Science

River Partners

The Nature Conservancy

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Re: Central Valley Joint Venture Comments on Preliminary Draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State (July 21, 2017 Version)

Dear Chair Felicia Marcus, Clerk Townsend, and Members of the Board:

The Central Valley Joint Venture (CVJV) appreciates the opportunity to comment on the Preliminary Draft State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Discharge Procedures). We worked with State Water Resources Control Board (SWRCB) staff and Board members in 2013 and again in 2016 to improve prior versions of the proposed Discharge Procedures.

The CVJV is a self-directed public-private partnership responsible for implementing national and international bird conservation plans in California's Central Valley, and is formally recognized for that responsibility. The CVJV is comprised of 19 partners including representatives from seven non-governmental conservation organizations, 11 state and federal agencies, and one regulated utility provider. The CVJV's mission is to work collaboratively through diverse partnerships to protect, restore, and enhance wetlands and associated habitats for waterfowl, shorebirds, waterbirds, and riparian songbirds in the Central Valley.

The Central Valley is one of the most important and most threatened areas for waterfowl and other wetland-dependent wildlife on the continent. Habitat loss has been extensive. More than 95% of the wetlands that were present historically have been lost. The CVJV is working rigorously to conserve wetland habitat in this critical area before it is too late. We support the SWRCB's goal to ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetland acreage and values.

We are pleased that many of our previously requested revisions were incorporated into the current Discharge Procedures. For example, the definition of Ecological Restoration and Enhancement Projects (EREPs) was revised to better describe the limited circumstances when the Discharge Procedures will be relaxed. The proposed definition of an EREP covers only voluntary, non-mitigation projects that restore and enhance wetlands and are not for the purpose of land development. EREPs must be undertaken directly by a state or federal resource agency, or in accordance with a binding enhancement, restoration, or wetland establishment agreement with an enumerated public agency or conservation organization. We believe that this definition will make sure only "good projects," designed for the purpose of improving wetlands and subject to rigorous quality control assurances, will qualify for streamlined treatment under the Discharge Procedures.

However, we request three further revisions and clarifications to the proposed Discharge Procedures to ensure that they do not create additional regulatory burden for EREPs and thereby adversely impact the ability of the conservation partners of the CVJV to delivery on-the-ground wetland restoration and enhancement. The need for these changes, and requested language in strikeout-underline format, are provided below:

(1) The application requirements for EREPs should be revised, to better recognize their critical role in restoring and enhancing wetlands, and reduce duplicative or deterrent regulatory hurdles to their accomplishment;

(2) The definition of an EREP should include local agencies that have a primary function of managing wetlands, within the list of enumerated agencies and organizations who administer wetland enhancement, restoration, and establishment agreements; and

(3) The SWRCB should cross-reference (for example in the staff report for the Discharge Requirements) prior water board orders and resolutions that address managed wetlands.

Our stakeholder representatives received positive feedback on these proposals during meetings with staff, and SWRCB Board Members indicated they are also receptive to making these changes.

## **1. Streamlined EREP Application Requirements Will Advance the SWRCB's Policy Goals**

As noted above, the definition of an EREP provides the SWRCB with a comprehensive "first cut" method to ensure that only those projects that are truly beneficial to wetlands and are subject to binding contractual requirements and oversight will qualify for streamlined treatment under the

Discharge Procedures. We appreciate staff's efforts to relax the application process for EREPs by exempting them from the requirement to submit an alternatives analysis, and by not requiring compensatory mitigation for EREPs. These are common-sense exemptions.

We remain concerned, however, that other application requirements for EREPs will consume scarce staff time and financial resources, and duplicate provisions in the binding stream or wetland enhancement, restoration, or wetland establishment agreements that qualify a project as an EREP in the first place. There is also a significant potential that landowners will be deterred by the application requirements from voluntarily undertaking important wetland habitat projects. We are particularly concerned about the case-by-case requirements to provide a water quality monitoring plan, a draft restoration plan, and a draft assessment plan, as described in section A.2 (d), (e), and (f) of the application requirements (Discharge Procedures p. 7).

Keeping in mind the strict definition of an EREP project, we request that subsections (e) and (f) be revised as follows:

e. In all cases where temporary impacts are proposed, a draft restoration plan that outlines design, implementation, assessment, and maintenance for restoring areas of temporary impact to pre-project conditions. The design components shall include the objectives of the restoration plan; grading plan of disturbed areas to pre-project contours; a planting palette with plant species native to the area; seed collection locations; and an invasive species management plan. The implementation component shall include all proposed actions to implement the plan (e.g., re-contouring, initial planting, site stabilization, removal of temporary structures) and a schedule for completing those actions. The maintenance and assessment components shall include a description of performance standards used to evaluate attainment of objectives; the timeframe for determining attainment of performance standards; and maintenance requirements (e.g., watering, weeding, replanting and invasive species control). The level of detail in the restoration plan shall be sufficient to accurately evaluate whether the restoration offsets the adverse impacts attributed to a project. Prior to issuance of the Order, the applicant shall submit a final restoration plan. **For Ecological Restoration and Enhancement Projects, the restoration or enhancement plan provided as part of the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement shall satisfy this requirement.**

f. ~~For all~~ Ecological Restoration and Enhancement Projects **shall provide a description of a draft assessment plan including the following:** project objectives, ~~description of~~ performance standards used to evaluate attainment of objectives, ~~protocols for condition assessment;~~ the timeframe and responsible party for ~~determining if objectives have been met, performing condition assessment;~~ and ~~assessment~~ **the proposed** schedule. **These requirements, as well as the water quality monitoring requirements of subsection (d) above, may be met by providing copies of similar materials already produced as a requirement of the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement for the project. Monitoring and reporting to ensure that Ecological Restoration and Enhancement**

**Projects are being managed and maintained consistent with their intended purpose shall be limited to that which is required by the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement through which the project was undertaken (private lands) or which is routinely conducted by the managing resource agency to assess progress in accomplishing habitat management objectives (public lands). These Procedures do not require any additional monitoring or reporting for Ecological Restoration and Enhancement projects. A draft assessment plan shall provide for at least one assessment of the overall condition of aquatic resources and their likely stressors, using an appropriate assessment method approved by the permitting authority, prior to restoration and/or enhancement and two years following restoration and/or enhancement to determine success of the restoration and/or enhancement.**

## **2. EREPs Should Include Projects Under Contract with Local Wetland Agencies**

The proposed definition of an EREP requires that projects be under a binding stream or wetland enhancement, restoration, or wetland establishment agreement that is executed between the landowner and: (1) an enumerated state or federal resource agency, (2) another federal or state resource agency, or (3) a non-governmental conservation organization. In California, however, there also exist a handful of local public agencies whose jurisdiction and mission are specific to wetland protection and enhancement. These local agencies should also be eligible to hold a qualifying agreement with landowners for EREP projects.

For example, the Suisun Resource Conservation District and Grassland Resource Conservation District (“RCDs”) are acknowledged under state law as having the “primary function” of “maintaining wildlife and wetland habitats.”<sup>1</sup> The Suisun RCD is charged with implementing the Suisun Marsh Preservation Act, and “provides landowners technical assistance in permitting, water control, and habitat management to ensure the wetland and wildlife values of the Suisun Marsh are sustained and enhanced.”<sup>2</sup> The Grassland RCD receives water from the Grassland Water District, a local agency whose “primary function is to protect, secure and deliver water to the critical wetland habitat within its boundaries.”<sup>3</sup>

Wetland-specific local agencies are qualified to enter into agreements with landowners for enhancement, restoration, or establishment of wetlands. Similar to other binding EREP agreements, they should be included in the list of qualifying projects. We request the following modification to this excerpt from the definition of an EREP project (Discharge Procedures, p. 14):

...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 landowner and the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National

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<sup>1</sup> Public Resources Code § 9352(d).

<sup>2</sup> Pub. Resources Code § 9960 *et seq.*; <http://www.suisunrcd.org/>.

<sup>3</sup> <http://gwdwater.org/gwd-who-we-are/>

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 other federal or state resource agency, **a local agency with the primary function of managing land or water for wetland habitat purposes**, or non-governmental conservation organization; or 2) by a state or federal **resource** agency....

### **3. The SWRCB Should Cross-Reference Other Documents that Address Managed Wetlands**

Finally, the SWRCB's findings, staff report, or other formal written materials associated with the Discharge Requirements should include a discussion of the principals articulated in previous state and regional water board orders and resolutions regarding managed wetlands.<sup>4</sup> We believe that the consideration and adoption of the proposed Discharge Requirements provides a unique opportunity for the SWRCB to underscore prior findings about the importance and regulatory status of managed wetlands. The policies underlying these findings will help guide the SWRCB and the Regional Water Quality Control Boards when implementing the Discharge Requirements. Referencing previous orders and resolutions will also help ensure consistency across multiple SWRCB regulatory programs that apply to managed wetlands. We request the following discussion be included in the final staff report or similar document related to the Discharge Requirements:

“Managed wetlands are considered irrigated lands under the Irrigated Lands Regulatory Program administered by the Central Valley Regional Water Quality Control Board (CVRWQCB), subject to certain exceptions related to how managed wetlands comply with that program. In prior orders and resolutions, the SWRCB and the CVRWQCB have emphasized the public trust habitat values of managed wetlands. The proposed Discharge Procedures are intended to be implemented consistent with these prior orders and resolutions, and with recognition that the continued protection, restoration, and enhancement of managed wetlands is critical to the State's public trust resources and wildlife.”

The CVJV thanks the SWRCB for the opportunity to suggest further improvements to the draft Discharge Procedures. We look forward to continuing dialogue with the SWRCB and working together to craft a Discharge Procedures that will facilitate voluntary wetland restoration and enhancement work and truly achieve no overall net loss and a long-term net gain in the quantity, quality, and diversity of Waters of the State, including wetlands.

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<sup>4</sup> SWRCB Water Rights Order 86-5, *available at*: [http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1986/wro86-05.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1986/wro86-05.pdf); CVRWQCB Resolution R5-2016-0064, *available at*: [http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/resolutions/r5-2016-0064\\_res.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/resolutions/r5-2016-0064_res.pdf)

Please contact Mike Dunphy, CVJV Coordinator, at (916) 414-6459 or Virginia Getz, CVJV Lands Committee Chair, at (916) 852-2000 with questions or to further coordinate with the CVJV on the draft Discharge Procedures.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff McCreary". The signature is fluid and cursive, with the first name "Jeff" written in a larger, more prominent script than the last name "McCreary".

Jeff McCreary  
Management Board Chair

cc: SWRCB Board Members  
CVJV Management Board