



September 18, 2017

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Jeanine Townsend, Clerk to the Board  
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*Delivered via e-mail to Clerk to the Board at [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)*

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**SUBJECT: Statewide Dredged or Fill Procedures Comments**

**Board of Directors**

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Dear Ms. Townsend:

The Sacramento Regional County Sanitation District (Regional San) appreciates the opportunity to comment on the Proposed Amendments to the State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Proposed Amendments) dated 7/21/17. Regional San provides wastewater collection, conveyance and treatment for over 1.4 million people in the Sacramento region. We provide collection and treatment of an average of 150 million gallons of wastewater per day for the greater Sacramento area.

Regional San would be affected by the Proposed Amendments related to several assets and facilities including: construction of future collection system facilities, maintenance and operation of onsite treatment systems at the Sacramento Regional Wastewater Treatment Plant (SRWTP), and ownership of wetland features contained with the SRWTP Bufferlands area. In addition, we are developing an expansion of our recycled water program to include crop irrigation, habitat restoration, and groundwater recharge as part of the South Sacramento County Agriculture and Habitat Lands Recycled Water, Groundwater Storage, and Conjunctive Use Program (South County Ag Program). This program would also be affected by the Proposed Amendments.

While Regional San shares the underlying goal of the State Water Board of increasing wetlands resources in California, we believe the Proposed Amendments will have potentially costly impacts on public agencies such as Regional San. We provide the following comments as improvements and clarifications to the Proposed Amendments. Suggested added text is shown in green underline and suggested deletions are shown in ~~red~~ strikethrough.

### **Comments on Section II. Wetland Definition**

1. Regional San is concerned that the Proposed Amendments will place additional administrative burdens on public agencies that might otherwise routinely qualify for the Corps' Nationwide Permits where a Pre-Certification has not been issued by the State Water Resources Control Board. In these cases, a project applicant would be required to perform (and document compliance with) the 404(b)(1) Guidelines (*i.e.*, avoid, minimize, mitigate impacts of a proposed fill), and perhaps develop mitigation proposals accordingly. This new requirement could be easily remedied if the State Water Board were to direct staff to promptly adopt pre-certification orders for many of the Corps' Nationwide Permits that have little or no impacts on wetlands in California.

2. Item 3 states "*Wetlands that meet current or historic definitions of "waters of the United States"*". US EPA and the Department of the Army are proposing a revision to the 2015 definition of Waters of the United States. Historically there have been related revisions and legal challenges. Basing the definition of wetlands on "current or historic definitions" could lead to significant confusion. However, that confusion (and potential regulatory inconsistencies) could be avoided by making clear that such historical jurisdictional determinations must be confirmed by a synchronal wetlands delineation. Regional San suggests changing Item 3 of the proposed definition to the following:

*"3. Wetlands that meet current or historic definitions of 'waters of the United States', provided that reasonable evidence exists to support such current or historic definitions are met, preferably by a delineation of applicable site-specific wetlands characteristics."*

3. Item 4 criteria "c" includes artificial wetlands that "*Resulted from historic human activity and has become a relatively permanent part of the natural landscape*". Ponds used for purposes such as wastewater treatment or groundwater recharge, or artificial wetlands created through conjunctive use of recycled water could be interpreted to be included in this component of the definition. It appears that criteria 4.d.i attempts to exempt these types of artificial wetlands that are greater than one acre, but criteria 4.d that states "*the following artificial wetlands are not waters of the state unless they also satisfy another one of the above criteria*" appears to prevent their exemption. Additionally, ponds that had a past use for wastewater treatment that incidentally create a wetland should not be subject to regulation. Regional San recommends revising criteria 4.d to more clearly define the artificial wetlands described in 4.d.i-viii that would not be regulated under the Proposed Amendments, as follows:

*"d. Greater than or equal to one acre in size, unless the artificial wetland was constructed and is currently used and maintained primarily for one or more of the following purposes (*i.e.*, the following artificial wetlands are not waters of the state unless they also satisfy another one of the above criteria)"*

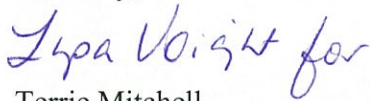


4. Item 4 criteria d.i does not mention recycled water, which is distinct from wastewater treatment or disposal. Regional San recommends that recycled water be included in item 4.d.i as follows:

*i. "Industrial or municipal wastewater treatment or disposal, including recycled water use or disposal,"*

We appreciate the opportunity to provide our comments to the Proposed Amendments. If you have any questions, please feel free to contact me directly at (916) 876-6092 or ([Mitchellt@sacsewer.com](mailto:Mitchellt@sacsewer.com)).

Sincerely,



Terrie Mitchell  
Manager, Legislative and Regulatory Affairs

cc: Lysa Voight - Regional San Senior Civil Engineer