

**REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**EXECUTIVE OFFICER SUMMARY REPORT
DECEMBER 11, 2019**

ITEM 8

SUBJECT

Update on the Clean Water Act Section 401 Program for Dredged and Fill Material Discharges. *(Eric Becker)*

STAFF RECOMMENDATION

This is an informational item and the Board will not take an action.

KEY ISSUE

Continued improvements in strategies and outcomes of the Clean Water Act Section 401 Dredge and Fill Program (401 Program) are needed to leverage the effectiveness of regulatory actions to protect and restore the San Diego Region's wetlands and riparian areas.

PRACTICAL VISION

The 401 Program implements the San Diego Water Board's Practical Vision entitled Healthy Waters, Healthy People. The permitting, inspection, compliance, and enforcement activities of the 401 Program directly implement the aspirational goals of the Recovery of Stream, Wetlands and Riparian Systems Chapter 3 of the Practical Vision to attain no overall net loss and a long-term net gain in the quantity, quality and sustainability of aquatic resources.

DISCUSSION

The 401 Program's jurisdiction over dredged and fill material discharges puts it on the front line of protection for wetlands and riparian areas. A summary overview of the regulatory framework is provided in **Supporting Document No. 1**. San Diego Water Board Members last received an update on the 401 Program at the December 12, 2018 Board meeting.

Informational Requirements for Complete Permit Applications

Over the past year, 401 Program staff worked with the regulated community to eliminate defects in applications for proposed discharges of dredged or fill material to waters of the State, which includes both waters of the United States and non-federal waters of the State. Complete information in applications that fulfills regulatory requirements can result in a streamlined process and shortened processing times for Clean Water Act section 401 water quality certifications (certifications), and/or waste discharge requirements or waivers thereof under the California Water Code (collectively referred to as permits). To achieve shorter permit processing times, 401 Program staff have implemented two primary strategies. First, increased emphasis has been placed on pre-application consultation meetings which allow early engagement with project applicants to identify inadequacies in applications, and public outreach. Pre-application consultation efforts include encouraging applicants' attendance at monthly meetings with permitting agencies organized by the California Department of Fish and Wildlife (CDFW) or direct discussions with 401 Program

staff. Both forums are intended to resolve issues early and answer questions prior to submitting applications. Following application submittal, 401 Program staff work to quickly identify application inadequacies, address issues and concerns and respond to meeting requests. Second, the San Diego Water Board recently conducted a public outreach workshop entitled How to Get Your Permit Application for Proposed Discharges of Dredged or Fill Material Processed on November 7, 2019. The goal of the workshop was to discuss the informational requirements to eliminate application defects and enable efficient processing of permits in a more predictable time period. The workshop also provided an opportunity to hear from project applicants, consultants, and other interested persons regarding the efficiency and effectiveness of the application process and what is needed to improve understanding of the information needed to submit a complete application. The workshop was well received (over 70 participants attended) and 401 Program staff plan to hold additional workshops in the future.

Waters of the United States and Water Quality Certification Rulemaking

The United States Environmental Protection Agency (USEPA) has issued Proposed Rules that have the potential to impact the 401 Program. On February 14, 2019, the USEPA published a Proposed Rule to redefine the scope of what are waters of the United States and protected by the Clean Water Act.¹ The State Water Board and Regional Water Boards (collectively Water Boards) provided extensive comments objecting to the Proposed Rule that would significantly shrink the federal regulation of waters in California and adversely impact regulation of aquatic resources (**Supporting Document No. 2**). On August 22, 2019, the USEPA published another Proposed Rule to replace and update existing Clean Water Action section 401 water quality certification regulations at 40 CFR 121.² The Water Boards provided extensive comments objecting to the Proposed Rule that would adversely impact the State's ability to regulate aquatic resources and shorten time frames to respond to water quality certification applications (**Supporting Document No. 3**).

Wetland Restoration Activities

The San Diego Water Board is taking an active role in promoting the restoration of aquatic resources in the San Diego Region pursuant to Resolution No. R9-2015-0041, *Resolution to Support Restoration of Aquatic Ecosystems in the San Diego Region*. 401 Program staff are working to address wetland restoration in Mission Bay. This on-going work is in collaboration with the ReWild Mission Bay project, supported by the San Diego Audubon Society and other regional stakeholders. ReWild aims to restore wetlands in the northeast corner of Mission Bay (De Anza Cove and De Anza Point) at the former sites of Campland on the Bay and Mission Bay RV Resort. This project would lead to a significant gain in aquatic ecosystems and restoration of beneficial uses. 401 Program staff member Nicole Gergans assisted with the preparation of a Feasibility Study as a member of ReWild's

¹ The Proposed Rule, Revised Definition of "Waters of the United States", as published in 84 FR 4154-4220 (February 14, 2019) can be accessed on USEPA website at: <https://www.epa.gov/wotus-rule/proposed-revised-definition-wotus-public-hearing> (as of November 18, 2019)

² The Proposed Rule, Updating Regulations on Water Quality Certification, as published in 84 FR 44080-44122 (August 22, 2019) can be accessed on USEPA website at <https://www.epa.gov/cwa-401/proposed-rule-updating-regulations-water-quality-certification-0>: (as of November 18, 2019)

Technical Advisory Committee. Currently, 401 Program staff member Jill Harris is working with San Diego Audubon and other regulatory agencies to support the development and implementation of this project. The City of San Diego (City) is taking the ReWild plans into consideration as it moves forward with revitalizing the De Anza area. Currently, the City is preparing to issue a draft California Environmental Quality Act (CEQA) document, and the San Diego Water Board will be updated as this project moves forward.

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

On April 2, 2019 the State Water Board adopted a State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures), for inclusion in the forthcoming Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. The Procedures consist of four major elements: 1) a wetland definition; 2) a framework for determining if a feature that meets the wetland definition is a water of the State; 3) wetland delineation procedures; and 4) procedures for the submittal, review and approval of applications for water quality certifications and waste discharge requirements/waivers for dredged or fill activities. The Procedures will be effective May 28, 2020 and are available on the State Water Board website at:

https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html

At the November 7, 2019 workshop, State Water Board staff provided a tentative schedule for training and workshops on the Procedures over the next 6 months:

1. **December 2, 2019:** State Water Board staff will host an informal stakeholder meeting in Sacramento to receive input and inform preliminary draft guidance.
2. **January – February 2020:** Draft guidance will be circulated and discussed with the stakeholders that participated in the December 2, 2019 informal meeting.
3. **March – April 2020:** Guidance will be finalized and posted on the State Water Board website.
4. **April – May 2020:** State Water Board will hold public workshops to go over the guidance and answer questions. Workshops will likely be held at the following regional water board locations: Sacramento, Redding, San Diego, Lake Tahoe, Los Angeles, and Santa Rosa.

PUBLIC NOTICE

This item was publicly noticed in the Meeting Notice and Agenda for the December 11, 2019 meeting. The agenda notice for today's meeting was posted on the San Diego Water Board website and sent to subscribers to the email list for Board meetings.

SUPPORTING DOCUMENTS

1. Summary Information on the Regulatory Framework for Wetland Riparian Area Protection
2. Water Boards Comment Letter on USEPA Proposed Rule on revising the definition for waters of the United States (April 15, 2019)
3. Water Boards Comment Letter on USEPA Proposed Rule on updating regulations on water quality certification (October 29, 2019)