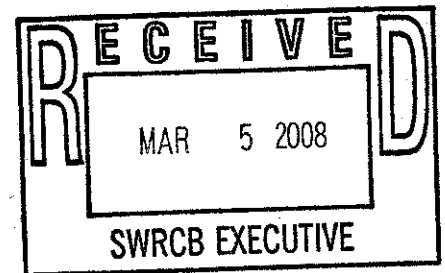


**Bay Planning Coalition**  
**Building Industry Association of Southern California**  
**California Building Industry Association**  
**California Chamber of Commerce**  
**California Farm Bureau Federation**  
**California Forestry Association**  
**California State Association of Counties**  
**Construction Industry Coalition on Water Quality**  
**Consulting Engineers and Land Surveyors of California**  
**Resource Landowners Coalition**  
**Wine Institute**

March 5, 2008

Ms. Jeanine Townsend  
Clerk of the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



RE: Policy to Protect Wetlands and Riparian Areas

Dear Ms. Townsend:

The above-listed organizations appreciate the opportunity to comment on the Proposed State Water Resources Control Board Resolution to Develop a Policy to Protect Wetlands and Riparian Areas (Proposed Resolution). Our organizations recognize the need to protect the state's wetlands while at the same time respecting the rights of landowners.

On April 19, 2007, our organizations commented on the State Water Resources Control Board's (Board) Proposed Wetlands and Riparian Area Protection Policy Scoping Document. In those comments, we asked the Board to pursue modified versions of either Alternative 1, the no action alternative or Alternative 2, the alternative that acknowledges the policies and regulatory mechanisms already identified in the 2004 Workplan: Filling the Gaps in Wetlands Protections.<sup>1</sup> We have attached our comments for your

<sup>1</sup> As described in our earlier comment letter, we believe that neither Alternative 1 or 2 adequately reflected the policy guidance provided by General WDR (2004-004-DWQ) and the Board's subsequent guidance to the RWQCBs on this

convenience. As stated in that letter, we are not challenging the Board's efforts to address any "gaps" in wetlands protections resulting from the 2001 U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (SWANCC) and subsequent decisions so long as those actions do not result in additional regulatory burdens beyond those imposed under the Corps program. We do not support, however, any efforts that seek to increase the regulatory burden or that seek to do more than to fill the gap.

The Proposed Resolution ignores the comments we submitted on the scoping document. We oppose the Proposed Resolution as each of the three phases seeks either to impose new requirements or to regulate new areas. The State budget crisis and the downturn in the economy underscore the need to proceed with caution before adopting expensive and burdensome new programs.

The Proposed Resolution would have the state embark on a major new regulatory program—one that will be expensive to both the state and the regulated community. The Proposed Resolution neither identifies the need for these actions or the authority for these actions. We continue to support Alternative 1 or Alternative 2 from the CEQA Scoping Document. We also reiterate our view that neither Region 1 nor Region 2 should move forward on their efforts in this arena until after the State Board has acted.

- 1. The Staff has not responded to the comments filed in response to the scoping request. The Board received extensive comments on the scoping request it published last March. Many of the comments sent in were form letters which expressed general support or opposition. However, the Board also received a number of very substantive letters including comments from the Department of Water Resources and other water organizations expressing concern over impacts to operations. Others, as we did, raised substantive concerns about duplication, authority and need. We have not seen any response to those comments. The Board should not act until Staff has reviewed those comments, evaluated them, and provided a response.
- 2. The Board has not established the need to expand its jurisdiction beyond that required to fill the SWANCC gap. Each phase of the proposed resolution would go beyond filling the SWANCC gap. The Proposed Resolution and all three phases of policy development do not provide any justification for rejecting the policy guidance provided by General WDR

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issue nor the actions outlined in the 2004 Workplan. If the Board proceeds with either of these alternatives, we request that they be modified to be consistent with these documents.

(2004-0004-DWQ) for wetlands adopted in 2004 and the Board's subsequent guidance to the RWQCBs on this issue. In those actions, the Board voted to regulate only those waters that had fallen out of federal jurisdiction. A broader regulatory scope recommended by staff was not adopted. An attempt to regulate broadly defined "riparian areas" was specifically removed from the order. Normal farming practices were also specially exempted. After this order was adopted, the Board issued guidance to the RWQCBs to issue WDRs for all wetlands that had fallen out of federal jurisdiction, within the regulatory parameters of the General WDR. This included very strict mitigation measures for all impacts. In light of these prior actions, we expect that the Board would have demonstrated that there is a need for the new actions before it published the Proposed Resolution. The Board could and should have provided to the public for its review a database that clearly and factually identifies how the Board determined that new actions are needed to address specific and identifiable activities that are not addressed by any of the existing regulatory programs. We have not seen any such data and do not believe that the Board can support the view that a new program is needed without some data.

- 3. The Board has not established the legal basis for the Proposed Resolution. The Proposed Resolution – including all three phases – erroneously assumes that the Board has authority to carry out the planned programs. For example, the Proposed Resolutions propose the development of a new beneficial use definition for riparian areas. We have commented on why we do not agree that current law allows this. Furthermore, the Proposed Resolution would require staff to develop a program to protect riparian areas and related functions. Such a program seeks to regulate activities that do not involve impacts on waters of the state and, thus fall completely outside the authority of the Board. It makes no sense for the Board to expend large amounts of time, money and effort on actions beyond its authority.

4. The Proposed Resolution does not provide justification for changing the 2004 Workplan: Filling the Gaps in Wetlands Protections recommendation for federal definition of "wetlands." Although the 2004 Workplan is mentioned in the Proposed Resolution, it fails to provide an explanation as to why the framework established under the 2004 Workplan has to be expanded into policy areas beyond its original intent. The Proposed Resolution would require staff to expand the scope of the yet-to-be developed policy to focus on such issues as the development of new beneficial use definitions. The 2004 Workplan also recommended that California should adopt the federal definition of "wetlands" (see page 4 of the Workplan). We do not believe the Board should change this position.

- 5. The Proposed Resolution fails to take into account the regulatory authority of the Department of Fish and Game over riparian areas. The Proposed Resolution would require the Board to regulate upland riparian areas, never regulated by the US Army Corps. The Proposed Resolution omits the fact that the Department of Fish and Game regulates many riparian areas through the 1600 streambed alteration program. Moreover, the issue of regulating upland riparian areas was specifically rejected by the Board in 2004. As it relates to this specific regulatory policy, our organizations believe that the Board's proposed regulation over upland riparian areas would be duplicative and should once again be rejected.

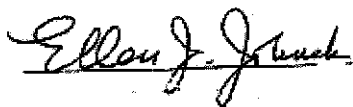
Assuming the Board decides to proceed, we are unclear what process the Board will follow, what effect it intends the policy to have and when the policy would take effect. We had anticipated that the Board would be preparing an analysis of its proposed policy that would comply with CEQA and that the CEQA document would analyze at least the four alternatives addressed in the scoping document. It appears the Board may have abandoned that plan. We urge the Board to fully comply with CEQA before it takes any further action and to consider both Alternative 1 and 2. We are also not clear what the Board intends by adopting a policy instead of new regulations or orders. We would appreciate further clarification of this point.

At this time, our organizations believe that the Proposed Resolution should not be adopted and the matter should either be dropped or continued to a future Board meeting to allow further consideration of this important issue.

If the Board does act, we recommend that the scope of the proposed policy be limited to a definition of "wetland" consistent with the U.S. Army Corps standards and a focus solely on the post-SWANCC federal regulatory scheme. The policy should also acknowledge the policies and regulatory mechanisms already identified in the *2004 Workplan* and the General WDR order for wetlands.

We appreciate the opportunity to provide the Board with our comments and concerns regarding the Proposed Resolution.

Sincerely,

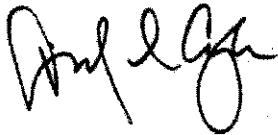


Ellen Johnck  
Bay Planning Coalition




Mark Grey  
Building Industry Association of Southern California

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Tim Coyle  
California Building Industry Association



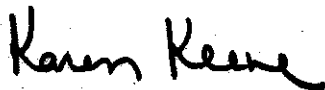
Valerie Nera  
California Chamber of Commerce



Chris Scheuring  
California Farm Bureau Federation



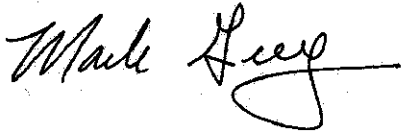
Michele Dias  
California Forestry Association



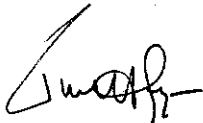
Karen Keene  
California State Association of Counties



Paul Meyer  
Consulting Engineers and Land Surveyors of California



Mark Grey  
Construction Industry Coalition on Water Quality



Bill Geyer  
Resource Landowners Coalition



Michael Falasco  
Wine Institute

cc: Tam Doduc, Chair, State Water Resources Control Board  
Gary Wolff, Vice Chair, State Water Resources Control Board  
Art Baggett, Member, State Water Resources Control Board  
Charlie Hoppin, Member, State Water Resources Control Board  
Frances Spivy-Weber, Member, State Water Resources Control Board  
Dorothy Rice, Executive Director, State Water Resources Control Board