

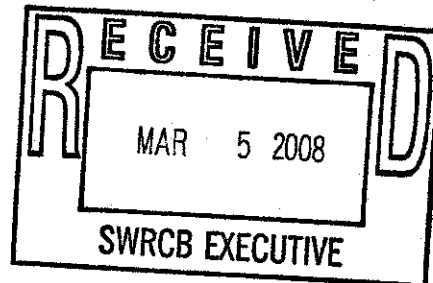


SIERRA CLUB
CALIFORNIA

3/18/08 Bd Mtg. Item 11
Wetlands & Riparian Areas
Deadline: 3/5/08 by 12 p.m.

March 5, 2008

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State Water Resources Control Board
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RE: Comment Letter – Policy to Protect Wetlands and Riparian Areas

Dear Chair Doduc and Members of the State Water Resources Control Board:

Sierra Club California strongly supports the State Water Resources Control Board's (Water Board) proposal to develop a Policy to Protect Wetlands and Riparian Areas and we appreciate the opportunity to comment on this proposal.

The need for such a policy was clearly presented in the Water Board's previous scoping workshop for a DEIR on this policy. California has the unhappy distinction of having destroyed more of its historic wetlands than most other states in the nation. Some estimate that as much as 85 % or more of our historic wetlands have been lost. Our loss of riparian habitat is even greater with an almost 98% loss.

While some progress has been made in slowing the loss of these precious resources, significant losses still take place every year. Furthermore, as a result of the recent US Supreme Court's SWANCC and Rapanos decisions, federal agencies such as the Army Corps of Engineers will no longer take jurisdiction over many of California's isolated wetlands.

As you undoubtedly know, our state's wetlands play vital roles in supporting fisheries and other wildlife. Over 75 % of all commercial fisheries depend on wetlands at some part of their life cycle and over 50% of avian species are likewise wetland dependent. Wetlands also play crucial roles in attenuating flood surges, improving water quality, replenishing groundwater supplies and new studies show they play a critical role in sequestering carbon, an essential element in our struggle to constrain global climate change.

For these reasons it is essential that the State Water Board move forward in adopting its proposed Protection policy for these invaluable resources.

We do have some concerns however, concerning the proposed Resolution's language.

Specifically:

1. In #5, Phase 1(a), and in #6 b. the Resolution directs staff to bring forward, "(a) a wetland definition that would rely on the United States Army Corps of Engineers' wetland definition to the extent feasible, but would also reliably define the diverse array of California wetlands." This is problematic since the

Army Corps' definition of wetlands has never been adequate to define all of California's wetlands. Since the Porter-Cologne Act instructs the Water Board to protect all waters of the state, a correspondingly broad definition of wetlands is required to allow for that protection. We urge that the Resolution be reworded to simply instruct staff to develop a definition of wetlands that would encompass all the varied wetlands of the state and not mention the Army Corps definition at all. For example, all the Resolution need say is that staff should bring forward, "(a) a wetland definition that would reliably define the diverse array of California wetlands."

2. In #5 Phase 1 (b), the Resolution instructs staff to develop, "a wetland regulatory mechanism based on the 404 (b)(1) guidelines (40 C.F.R. parts 230-233) that includes a watershed focus," and in #6.c "A framework for protecting water quality and beneficial uses that relies on sequential avoidance, minimization, and mitigation of impacts."

An analysis of Army Corps permitting shows that over 98% of all permits are approved, with the Corps using mitigation to justify a claim of no net loss of wetlands. However, many recent scientific studies, including those of the State Water Board indicate that mitigation fails to adequately replace all wetland functions and that there is almost always a net loss of wetland functions as a result of mitigation.

In the scoping documents published last year, the State Water Board proposed in Alternative 3 that the Board, "Develop a new state policy using California Water Code authorities that is more protective than the federal CWA 404(b)(1) Guidelines to regulate the impacts of dredge or fill material discharges to wetlands and riparian areas."

We urge you to include that language in the present Resolution. Simply replicating the 404(b)(1) guidelines can only result in a continuing loss of the state's wetlands and their functions.

3. The Resolution proposes that the Policy be developed in three phases. We agree that that is a reasonable process. However, the Resolution fails to set timelines for Phases 2 and 3 and that is unacceptable. We lose wetlands and riparian habitats every year and delays in developing Phases 2 and 3 (protecting wetlands from destruction by means other than dredge and fill activities and protecting riparian areas, respectively) means further losses of those precious resources. We ask that the Resolution put timelines for Phases 2 and 3 and we ask that those timelines be one year after each previous phase. Thus Phase 2 should be developed for 2010 and Phase 3 for 2011.

Again, Sierra Club California congratulates the Board on recognizing the need to provide protections for the state's wetlands and riparian areas. We urge you to incorporate our suggestions that will, we believe, result in a strong state policy for protecting our states wetlands and riparian areas.

Thank you for your attention to our concerns.

Sincerely yours,



Jim Metropulos
Senior Advocate