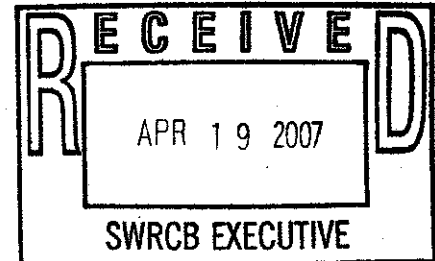




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

April 19, 2007

Ms. Song Her
Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



RE: Scoping Comments on Proposed Wetland and Riparian Area Protection Policy

Dear Ms. Her:

Thank you for the opportunity to review and comment on the proposed Wetland and Riparian Protection Policy. The U.S. Environmental Protection Agency (EPA) strongly supports the State's efforts to develop a statewide policy. A new, comprehensive policy is needed to strengthen protection of the State's stream courses, wetlands, and riparian areas and clarify how the State and Regional Water Boards will implement their programs and authorities to protect these critical resources. This letter briefly summarizes EPA's support for the policy and discusses factors the State should consider in selecting its preferred policy approach.

The Need for a Comprehensive Statewide Wetland and Riparian Protection Policy

The Policy Information Document correctly recognizes that historic losses in California's wetland and riparian resources have caused substantial adverse effects to water quality and beneficial uses. Although the State of California has broad authorities that can be used to protect wetland and riparian resources, the State can use these authorities more effectively to protect and restore water quality and beneficial uses of California's waters. The State should adopt a comprehensive policy to guide the consistent use of its existing tools (e.g., Section 401 certifications, NPDES stormwater permits, waste discharge requirements, the Nonpoint Source program, and total maximum daily loads) to address all discharges and activities that adversely impact these vital water resources.

This policy will yield benefits in several ways. First, the Regional Boards vary substantially in how they utilize State authorities to maximize aquatic and riparian resource protection. A comprehensive statewide policy will help ensure reasonably consistent application of regulatory tools in all Regions and, in the case of some Regions, substantial improvements in effectiveness. By providing clearer statewide programmatic direction, the policy will clarify regulatory expectations and compliance responsibilities

of regulated entities. Second, the Information Document correctly notes that federal jurisdiction under the Clean Water Act is currently in question for some classes of important water bodies as a result of recent federal court decisions. A policy that clarifies the requirement under State law to protect all the State's waters will help ensure waters no longer under federal jurisdiction will continue to be protected. Third, some regulatory and planning tools used by the State traditionally focus narrowly on pollutant discharge control and do not focus adequately on protection of other beneficial functions of wetland and riparian areas (e.g., floodwater retention, pollutant filtering, and habitat connectivity). By focusing upon preservation and restoration of the broader functions of these waters, the policy will enable the State to effectively address all causes of water quality degradation in the State. A statewide policy is needed now to ensure all California waters are afforded the same high level of comprehensive protection.

Key Issues to Address in the Policy Adoption Process

The Information Document does a good job of outlining potential policy options. Although we believe any clarification of the State's approach to protecting wetland and riparian resources would help, we believe option 4, the most comprehensive proposed option, is most worthy of development and adoption. As dredge and fill activities subject to Clean Water Act Section 404 represent only a subset of activities that cause impairment of important wetland, stream course, and riparian resources, the policy should focus broadly on all activities that threaten these resources, including hydrologic modifications, flood control projects, vegetation and land clearing, and actions that introduce or spread invasive species. Moreover, as wetland and riparian resource functions and threats are interconnected at watershed scales, the policy should not be limited to a subset of water body and wetland features. To be most effective, the policy should ensure that application of available authorities and tools to address individual activities also evaluates and accounts for the cumulative effects of related activities in affecting watershed, wetland, and riparian functions and uses.

The policy should include clear definitions of important terms and features the policy will address (e.g., wetlands, riparian areas, new beneficial uses, and new objectives). Where feasible, the policy should clearly identify appropriate measurement techniques and performance measures to provide a stronger analytical basis for evaluating proposed activities in wetland and riparian areas, determining regulatory requirements, and measuring effectiveness of regulatory actions.

We support the idea of including the Clean Water Act Section 404(b)(1) Guidelines in the policy to guide the evaluation of proposed discharge and disturbance activities. The Policy should clearly explain how the Guidelines should be applied in different situations. To ensure that inclusion of the Guidelines is effective, we urge the State to identify specific methods and measures to guide their "on the ground" implementation. We would be happy to work with the State to identify these methods and measures.

The Relationship Between Statewide and Individual Regional Board Policies

EPA has provided substantial grant assistance to support development of riparian, stream course, and wetland protection policies in Regional Boards 1 and 2. These Regional Boards have done an excellent job to date in developing these policies, and we recommend that the Regional Boards complete and adopt their policies. The work completed to date in these Regions will greatly assist the State Board's efforts to complete a statewide policy. As the Regional Board and State Board efforts are being closely coordinated, we are confident these efforts will not be duplicative or contradictory. The State should consider adopting a phased approach to policy development through which adoption of the two Regional Board policies precedes adoption of a consistent statewide policy. This approach would be analogous to the State's approach to adopting revised mercury objectives, though which Region 2's adoption process preceded and informed statewide development of mercury objectives.

Thank you for the opportunity to express our support for the State Board's effort to develop a strong wetland and riparian protection policy. EPA would like to continue assisting in policy development as the State's policy will effectively complement our efforts to protect wetland and riparian resources in California through the Section 404 permitting process and other programs. If you have questions concerning these comments or would like further assistance from EPA, please call me at (415) 972-3464.

Sincerely,

/original signed by/

David Smith, Chief
Wetlands Regulatory Office (WTR-8)